

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DAVID ZINNEL,

Claimant-Appellee,

v.

STEVEN ZINNEL,

Defendant-Appellant.

No. 22-16128

D.C. No. 2:21-mc-00098-TLN-AC
Eastern District of California,
Sacramento

MOTION FOR SUBSTITUTION OR OTHER APPROPRIATE RELIEF OF
JENNIFER ZINNEL [Fed. R. App. P. 43(a)(1)]

K. Greg Peterson, Esq. (SBN: 118287)
K. GREG PETERSON, a Professional
Law Corporation
455 Capitol Mall, Suite 325
Sacramento, California 95814
Telephone: (916) 443-3010
Facsimile: (916) 492-2680
Email: greg@kgregpeterson.com

Attorney for JENNIFER ZINNEL,
Personal Representative of Appellee,
DAVID ZINNEL, Trustee of The Castana
Trust and Residuary Beneficiary

In accordance with this Court's Order filed on April 10, 2023, and Fed. Rules. App. Proc., rule 43(a)(1), 28 U.S.C., JENNIFER ZINNEL makes the following motion for substitution or other appropriate relief and submits the following.

1. Notice of Death.

On or about October 14, 2022, and after Steven Zinnel filed an appeal in the above-entitled matter was filed, DAVID ZINNEL, a third-party claimant and interested party to the lower court proceedings, was tragically killed in a motorcycle accident. Jennifer Zinnel was David Zinnel's wife at the time of his death.

2. Nature of David Zinnel's Interest in the Underlying Proceedings.

David Zinnel was never a party to the underlying criminal proceeding [Criminal Case No. 2:11-cr-00234-TLN]. Moving party does not believe the Trustee of the Castana Trust nor the personal representative of David Zinnel's probate estate has any interest in an appeal of the final judgment in Steven Zinnel's criminal case.

The nature of David Zinnel's interest in the underlying garnishment proceedings [D.C. Case No.: 2:21-mc-00098-TLN-AC] is as follows. The subject of the garnishment proceeding was a certain IRA investment account (*0163) in the amount of \$1,329,976.29 held by TD Ameritrade that the United States sought to garnish in order to satisfy certain unpaid restitution Steven Zinnel was ordered to pay as part of his original criminal conviction, in the total amount of \$3,315,723.40.

The original owner of the IRA account, ARDITH FERRIS, who was the mother of both Steven and David Zinnel, died on September 21, 2016. David Zinnel filed a third-party claim in the USA's garnishment proceeding.¹ David Zinnel claimed and Steven Zinnel later admitted that the beneficiary designation on the IRA account naming Steven Zinnel as the primary beneficiary on the death of the account holder had been completed by Steven Zinnel, but it was disputed as to whether or not that act was ever authorized by Ardith Ferris. David Zinnel claimed that it was unauthorized, and that the TD Ameritrade account proceeds should be determined to be an asset of the Castana Trust, a trust established by Ardith Ferris in 2009. Steven Zinnel claimed Ardith Ferris had authorized him to complete the IRA account application on her behalf. The USA claimed the IRA account belonged to Steven Zinnel and thus was fully subject to garnishment.

On June 3, 2022, in connection with a settlement conference held in the garnishment action before Hon. Kendall J. Newman, Chief Magistrate Judge, the USA, Steven Zinnel and David Zinnel reached a binding settlement.² The basic terms of the settlement provide, among other things, that David Zinnel will withdraw his Third-Party Claim, that the USA will garnish and levy upon the TD Ameritrade

¹Third-Party Claim of David Zinnel, dated May 3, 2021, D.C. Case No.: 2:21-mc-00098-TLN-AC (“**Case No. 00098**”), a true and correct copy of which is attached hereto as **Exhibit 1**.

² Transcript of Proceedings, Settlement Conference, June 3, 2022, Case No. 00098, a true and correct copy of which is attached hereto as **Exhibit 2**.

IRA account (*0163) but only in the amount of \$1,163,056 and in full satisfaction of all unpaid restitution owed by Steven Zinnel, and as between Steven Zinnel and David Zinnel it is agreed that the any remaining amounts held by TD Ameritrade in IRA account (*0163) are deemed to be an asset of the Castana Trust and following satisfaction of the USA's claim are to released by TD Ameritrade to David Zinnel in his capacity as successor trustee of that trust. David Zinnel immediately thereafter released his Third Party Claim and TD Ameritrade was ordered by the District Court to pay the USA the sum of \$1,162,047 per the settlement, but the remaining funds were ordered to remain held by TD Ameritrade "pending further order of the Court."³

On July 6, 2022, David Zinnel filed a Motion to Enforce Settlement⁴ but Steven Zinnel filed his appeal in this matter on July 26, 2022, and the District Court has not taken any further action on David Zinnel's motion.

3. Proceedings to Legally Establish Michael Brumbaugh's Status As David Zinnel's Personal Representative.

David Zinnel is survived by his wife, Jennifer Zinnel, and two minor children. Following the death of her husband, Jennifer Zinnel initiated legal proceedings that

³ Order Adopting Findings and Recommendations for Final Order of Garnishment, dated July 18, 2022, Case No. 00098, a true and correct copy of which is attached hereto as **Exhibit 3**.

⁴ Memorandum of Points and Authorities in Support of Motion to Enforce Settlement Agreement and for Money and Sanctions, dated July 6, 2022, Case No. 00098, a true and correct copy of which is attached hereto as **Exhibit 4**.

are now pending in the Sacramento Superior Court, Probate Division, to have that court issue orders establishing MICHAEL BRUMBAUGH as both the successor trustee of the Castana Trust, and as the Special Administrator of the intestate probate estate of David Zinnel. Michael Brumbaugh is a California licensed professional fiduciary. Through her Petition for Letters of Administration Jennifer Zinnel seeks to have Michael Brumbaugh appointed Special Administrator of David Zinnel's intestate probate estate. This matter is set to be heard on *August 15, 2023*, at 9:00 AM in Department 129 of the same court.⁵ Jennifer Zinnel's Petition to Appoint Successor Trustee seeks to have Michael Brumbaugh appointed to serve as the successor trustee of the Castana Trust, and is set to be heard on *August 30, 2023*, at 9:00 AM in Department 129 of the Sacramento Probate Court.⁶ Steven Zinnel has stipulated to the appointment of Michael Brumbaugh as successor trustee of the Castana Trust.⁷

/ / /

⁵ Petition for Letters of Administration, Authorization to Administer Under the Independent Administration of Estates Act, dated March 23, 2023, Sacramento Superior Court Case No. 34-2023-00336772, a true and correct copy of which is attached hereto as **Exhibit 5**.

⁶ Petition to Appoint Successor Trustee of The Castana Trust Dated March 4, 2009, dated March 29, 2003, Sacramento Superior Court Case No. 34-2016-00200990, a true and correct copy of which is attached hereto as **Exhibit 6**.

⁷ Stipulation Re: Appointment of Successor Trustee of The Castana Trust Dated March 4, 2009, dated March 18, 2023, Sacramento Superior Court Case No. 34-2016-00200990, a true and correct copy of which is attached hereto as **Exhibit 7**.

4. Nature of David Zinnel's Interest in the Pending Appeal.

Moving party's understanding of Steven Zinnel's appeal is that it relates primarily to the underlying judgment in the criminal case in which Steven Zinnel takes issue not only with the USA's restitution judgment and criminal penalties assessed against him, but also the offset he claims he should have been entitled to as a result of various seizures/forfeitures of his property that occurred and, he claims, should have operated as a credit against any amount he nevertheless owed in connection with his criminal case.

To the extent that Steven Zinnel's appeal relates to the garnishment case, Jennifer Zinnel contends his appeal is moot for several reasons. First, Steven Zinnel has entered into a voluntary and binding settlement with the USA and David Zinnel which settlement essentially forms the basis of the Order from which Steven Zinnel now appeals. Second, Steven Zinnel never requested a stay of execution nor did he file a bond, and the USA has since proceeded to not only levy upon and collect the monies voluntarily agreed to be paid from the IRA account by Steven Zinnel in the settlement, but it is moving party's understanding that those monies have also since been distributed to the third-party victims identified in the original restitution judgement. The remaining funds which are believed to be in the approximate amount of ~\$300,000.00, Steven Zinnel has agreed as part of the settlement to turn over to David Zinnel as trustee of the Castana Trust, but those funds remain in the possession

of TD Ameritrade subject to further court order. The only matters Steven Zinnel has given any indication of his intention to appeal relate to “jurisdiction and venue”⁸ apparently relating to the USA’s original garnishment action. The moving party take no position on those issues except to the extent that moving party contends they cannot be unwound by Steven Zinnel after the fact given Steven Zinnel’s knowing and voluntary settlement with the United States of American and David Zinnel.

5. Relief Requested by Jennifer Zinnel.

Moving party Jennifer Zinnel has every reason to believe that by August 30, 2023, Michael Brumbaugh will be appointed successor trustee of the Castana Trust and as the personal representative of David Zinnel in connection with the probate of his personal estate. Jennifer Zinnel requests that to the extent this Court believes the personal representative of David Zinnel in either capacity has any stake in the pending appeal filed by Steven Zinnel (1) that any briefing schedule be delayed for a reasonable period of time after the August 30, 2023, hearing referenced above in the Castana Trust matter, (2) that to the extent Michael Brumbaugh is appointed by the Sacramento Probate Court as the personal representative of David Zinnel (in either or both capacities) that he shall assume the position of David Zinnel in regards to this appeal, and (3) that to the extent the Sacramento Probate Court Proceedings

⁸ Settlement Transcript, 17:3-4. Exhibit 2.

do not result in the appointment of Michael Brumbaugh as the personal representative of David Zinnel (in either or both capacities) that by not later than September 15, 2023, Jennifer Zinnel shall file a status report with this Court concerning the Sacramento Probate Court proceedings concerning their status, rulings made, further necessary hearings (if any) and anticipated outcomes.

Dated: May 1, 2023

Respectfully submitted,

K. GREG PETERSON, a Professional
Law Corporation

/s/ K. Greg Peterson
By: _____
K. Greg Peterson, Esq., Attorney
for JENNIFER ZINNEL, Personal
Representative of Appellee DAVID
ZINNEL, Trustee of The Castana Trust and
Residuary Beneficiary

CERTIFICATE OF SERVICE

I certify that I served on the person(s) listed below, either by mail, email or hand delivery a copy of the within MOTION FOR SUBSTITUTION OR OTHER APPROPRIATE RELIEF OF JENNIFER ZINNEL.

Lynn Trinka Ernce
United States Attorneys Office
Eastern District of California
501 I Street, Suite 10-100
Sacramento, CA 95814

Lynn.trinka.ernce@usdoj.gov

Steven Zinnel
11 Verdin Lane
Aliso Viejo, CA 92656

firsthalfsteve@gmail.com

Christopher A. Stecher, Esq.
Keesal, Young & Logan
450 Pacific Avenue
San Francisco, CA 94111

Christopher.stecher@kyl.com

Dated: May 8, 2023

/s/ Karen Traugh

Karen Traugh

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1 K. Greg Peterson, Esq. (SBN: 118287)
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4 Sacramento, California 95814
5 Telephone: (916) 443-3010
6 Facsimile: (916) 492-2680
7 Email: greg@kgregpeterson.com

8 Attorney for Third-Party Claimant DAVID ZINNEL

9
10 IN THE UNITED STATES DISTRICT COURT
11
12 EASTERN DISTRICT OF CALIFORNIA
13
14

10 UNITED STATES OF AMERICA) Case No.: 2:21-mc-00098-WBS-AC
11 Plaintiff,) THIRD-PARTY CLAIM OF DAVID
12 v.) ZINNEL [Cal. Code Civ. Proc. §§
13 STEVEN ZINNEL) 710.110, 720.130, 720.230]
14 Defendant and Judgment) Criminal Case No.: 2-11-cf-00234-TLN
15 Debtor.)
16)
17 TD AMERITRADE CLEARING, INC.,)
18 (and its Successors and Assigns),)
19 Garnishee.)
20)

21
22 I, DAVID ZINNEL, declare as follows:

23 1. I am not a party to the above-captioned action, but I have an interest in the
24 personal property that is the subject of the garnishment proceedings commenced by
25 Judgment Creditor, UNITED STATES OF AMERICA, in this matter.

26 2. I am represented by legal counsel, K Greg Peterson Esq., and can be
27 reached through his office as indicated in the caption of this document.

28 3. I have an interest in the following described property:

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1 a. TD AMERITRADE Account ending in *0613 (the "Account")
2 consisting of securities and/or funds in the amount of one half of the Account value
3 of \$1,329,976.29 (as of February 2021).

4 4. I have an ownership interest in the above-described property by virtue of
5 the following facts:

6 a. The TD Ameritrade Account Agreement for Account *0613 (attached
7 as Exhibit A) dated August 12, 2005, designating Steve Zinnel as the Primary
8 Beneficiary in the event of the death of the Account Owner (Ardith L. Ferris) was
9 not signed by Ardith Ferris but instead appears to have been forged by Steven
10 Zinnel;

11 b. Ardith Ferris is my mother and I recognize her signature. The
12 signature on Page 3 of the Account Agreement for Account *0613 is not her
13 signature;

14 c. I have attached as Exhibit B multiple other exemplars of the
15 signatures of Ardith Ferris, and they are clearly dissimilar to that of the signature
16 appearing on the Account Agreement for Account *0613;

17 d. I am also familiar with the handwriting of my brother, Steve Zinnel,
18 and the handwriting and signature on Page 3 of the TD Ameritrade Account
19 Agreement is that of my brother, Steve Zinnel;

20 e. The TD Ameritrade Account *0613 appears to have been set up by
21 Steve Zinnel. The contact information for the Account refers to Steve Zinnel's
22 telephone number, email address and street/employer addresses for all
23 communications concerning the Account with TD Ameritrade.

24 f. On March 4, 2009, Ardith Ferris created a trust and a will (copies of
25 the Castana Trust and her Will are included with the documents attached as
26 Exhibit B). Under her trust (Sec. 5.4(a)) and her will (Sec. 3.1) Ardith Ferris
27 indicated her intent to leave the residue of her estate to be split between her two
28 sons, myself and Steve Zinnel; and

1 g. Although the TD Ameritrade Account was apparently set up by Steve
2 Zinnel on or about August 12, 2005, according to an email dated November 30,
3 2009 (attached as Exhibit C), it appears it was not until then that Steve Zinnel
4 informed Ardith Ferris for the first time of the Account number, username and
5 password for Account *0613.

6 5. The estimated market value of my above-described property interest is:
7 \$664,988.15 (based on a February 2021 Account value).

8 6. Attached are true and correct copies of the documents I have referenced
9 herein that support my claim.

10 I declare under penalty of perjury under the laws of the United States of America
11 and the State of California that the foregoing is true and correct, and that this THIRD-
12 PARTY CLAIM was signed at Sacramento, California, this 25th day of April, 2021.

DAVID ZINNELL

EXHIBIT A

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PRIMARY BENEFICIARY SPOUSAL AGREEMENT

If the participant's spouse is not designated as the sole primary beneficiary, the spouse must sign the following consent. "I hereby consent to the above beneficiary designation and, if a resident of a community property or marital property state, I give the account holder any interest in the funds deposited in this account."

Date:

Signature of Spouse

Account Number: 0613

IRA CASH AGREEMENT

I am establishing an Individual Retirement Account Plan under the Ameritrade Clearing, Division of Ameritrade, Inc. (Custodian) Prototype Individual Retirement Plan and Custodial Agreement, which is incorporated by reference. I understand that the account is subject to rules and regulations of the United States Internal Revenue Service, and that the funding of the account may have significant tax and financial consequences. I accept responsibility for the information contained in this application and affirm such information is true and correct. I agree to indemnify and hold harmless Ameritrade and Ameritrade Clearing, Division of Ameritrade, Inc. from any and all liability and claims for damages resulting from any action taken pursuant to this Agreement.

I designate Ameritrade Clearing, Division of Ameritrade, Inc. as Custodian and make the following declaration:

I understand that the Custodian will invest and reinvest my account assets only with written direction from me or from a properly appointed Investment Manager. This document constitutes my authority to execute all trades for my IRA. Confirmations and statements will verify such instructions. All securities, dividends and proceeds will be held at Ameritrade Clearing, Division of Ameritrade, Inc. unless otherwise instructed.

For Individual (Contributory) IRAs: I direct Ameritrade Clearing, Division of Ameritrade, Inc. to maintain my deductible, rollover, and direct rollover contribution(s) in a contributory Individual Retirement Account.

For Rollover (Non-Contributory) IRAs: I understand that if I make any contributions to this account, which holds funds rolled over from an employee benefit plan, or otherwise commingle rollover amounts, I cannot roll the funds over to another employee benefit plan at a later date. Upon my contribution to this account, I understand my account will be automatically changed to an Individual Contributory IRA.

Under penalties of perjury, I certify (1) that the Social Security Number shown on this form is my correct taxpayer identification number and (2) that I am not subject to backup withholding and (3) I am a U.S. person (including a resident alien); provided, however, if I am a non-resident alien as disclosed in this application, I do not certify that I am a U.S. person. If I have been notified by the IRS that I am subject to backup withholding as a result of dividend or interest underreporting, I must cross out (2) in this certification.

If I am a non-resident alien, I declare that I have "earned income" within the United States. "Earned Income" does not include, among other things, money earned from property, interest or dividend income, money received from a pension or annuity, money received as deferred compensation or as a deferred incentive award.

I understand this Designation of Beneficiary will be effective on the date received by the Custodian. This Designation of Beneficiary will remain in full force and effect until such time as the Custodian is in actual receipt of a written revocation or change of beneficiary signed by me and in such form and substance as the Custodian deems necessary. If I change the beneficiaries, all previously designated beneficiaries no longer have the right to receive benefits under this Agreement.

This application provides for the deposit of funds or securities into the account. I understand that the funding of this account is subject to the rules and regulations of the United States Internal Revenue Service and that my failure to abide by such rules and regulations may have important and possibly irrevocable tax and financial consequences. I attest that the funding information provided is true and correct, authorize Ameritrade Clearing, Division of Ameritrade, Inc. to deposit the funds or securities according to the funding instructions, and assume full responsibility for this funding transaction. I release and agree to indemnify and hold harmless Ameritrade Clearing, Division of Ameritrade, Inc. from any and all liability and claims for

B (Page 7 of 8)

C Open Your Account

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5 Case 2:11-cr-00234-TLN Document 670-1 Filed 03/24/21 Page 8 of 22
0 damages for any adverse consequences that may result.
22
5 Page 3 of 3
5

I have received and read the Terms and Conditions that will govern my account. I understand that the Terms and Conditions contain pre-dispute arbitration clauses. I agree to be bound by these terms and conditions as amended from time to time. I hereby request an IRA account to be opened in the name set forth below.

This Brokerage Account Agreement contains pre-dispute arbitration clauses in the Terms and Conditions section.

I understand that investments purchased through Ameritrade are not insured by the FDIC (Federal Deposit Insurance Corporation), are not obligations or guaranteed by any financial institution and are subject to investment risk and loss that may exceed the principal invested.

Important information about procedures for opening a new account:

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth and other information that will allow us to identify you. We may also utilize a third-party information provider for verification purposes and/or ask for a copy of your driver's license or other identifying documents.

Account Owner(s) must sign.

5/12/05
Date

X Ar
ARDITH T FERRIS
Account Number: [REDACTED] 0613

For Introducing Broker use only

R.R. - Gen. Prin.

Date

Accepted and Approved by Ameritrade Clearing

By: _____

Date: _____

Account Number: [REDACTED] 0613

END FORM - Terms and Conditions Effective: Tue Jul 19 09:32:49 CDT 2005

EXHIBIT B

RECORDING REQUESTED BY
Ardith Ferris

AND WHEN RECORDED MAIL TO

Name Ardith Ferris
Street 2428 Glenfaire Dr.
City/State Rancho Cordova, CA 95670

GRANT DEED

THIS UNDERSIGNED GRANTOR DECLARES
City of Rancho Cordova

Documentary Transfer Tax is \$0.00
Transfer under Revenue & Taxation Section
11930
Grantee is a Trust for the benefit of the Grantor

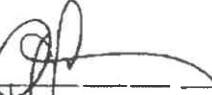
Conveyance Tax is \$0.00
Parcel No. 058-0206-011


Declarant or Agent Determining Tax

I, ARDITH FERRIS, formerly known as Ardith Zinnel, an unmarried woman, grants to ARDITH LOUISE FERRIS, AS TRUSTEE OF THE CASTANA TRUST initially established March 4, 2009, that certain real property situated in the County of Sacramento, State of California, described as follows:

2428 Glenfaire Dr., Rancho Cordova, CA 95670 (APN 058-0206-011), as more particularly described as Lot 510, as shown on the "Plat of Glenfaire Unit No. 5", recorded in the office of the County recorder of Sacramento county, on July 18, 1963 in Book 72 of Maps, Map No. 8.

Executed on March 4, 2009, at Gold River, California.


Ardith Ferris

MAIL TAX DOCUMENTS TO PARTY DIRECTED ABOVE IN TOP LEFT CORNER OF INSTRUMENT

California All-Purpose Acknowledgment

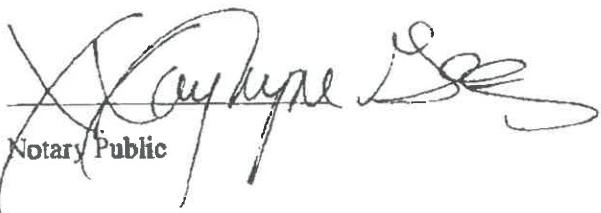
State of California)
) SS

County of Calaveras)

On March 4, 2009, before me, Jayleyne Goltz, a notary public in and for the State of California, personally appeared Ardithe Ferris, personally who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


Notary Public



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COUNTY OF SACRAMENTO, OFFICE OF THE ASSESSOR

KENNETH D. STIEGER, ASSESSOR

KATHLEEN KELLEHER, ASSISTANT ASSESSOR

PROPERTY TRANSFER DIVISION

1 Power Inn Rd., Suite 3000, Sacramento, CA, 95826-4329

www.assessor.saccounty.net

PRELIMINARY CHANGE OF OWNERSHIP REPORT

FOR ASSISTANCE
PHONE: (916)875-0750 8 a.m. - 4 p.m.

ASSESSOR'S USE ONLY

Sel. Pr. _____

Rel. Cd. _____

Sel. Ty. _____

C.E. _____

Cond. _____

[To be completed by transferee (buyer) prior to transfer of subject property in accordance with Section 480.3 of the Revenue and Taxation Code.]
 A Preliminary Change of Ownership Report must be filed with each conveyance in the County Recorder's Office for the county where the property is located; this particular form may be used in all 58 counties of California.

THIS REPORT IS NOT A PUBLIC DOCUMENT

Seller/Transferor ARDIM FERRIS

Mail Tax Information to:

Buyer/Transferee ARDIM LOUISE FERRIS AS TRUSTEE OF

Name 2428 GLENFARIO DR

Assessor's Parcel Number (s) 058-0206-011 CASTANA

Address MURRAY CORDEVA, CA

Property Address or Location 2428 GLENFARIO DR, MURRAY CORDEVA, CA

NOTICE: A lien for property taxes applies to your property on January 1 of each year for the taxes owing in the following fiscal year, July 1 through June 30. One-half of these taxes is due November 1, and one-half is due February 1. The first installment becomes delinquent on December 10, and the second installment becomes delinquent on April 10. One tax bill is mailed before November 1 to the owner of record. YOU MAY BE RESPONSIBLE FOR THE CURRENT OR UPCOMING PROPERTY TAXES EVEN IF YOU DO NOT RECEIVE THE TAX BILL.

The property which you acquired may be subject to a supplemental assessment in an amount to be determined by the Sacramento County Assessor. For further information on your supplemental roll obligation, please call the Sacramento County Assessor at 875-0700.

PART I: TRANSFER INFORMATION (please answer all questions)

YES NO

- D-A. Is this transfer solely between husband and wife (Addition of a spouse, death of a spouse, divorce settlement, etc.)?
- D-B. Is this transaction only a correction of the name(s) of the person(s) holding title to the property (For example, a name change upon marriage?) Please explain _____
- D-C. Is this document recorded to create, terminate, or reconvey a lender's interest in the property?
- D-D. Is this transaction recorded only as a requirement for financing purposes or to create, terminate, or reconvey a security interest (e.g. cosigner)? Please explain _____
- D-E. Is this document recorded to substitute a trustee of a trust, mortgage, or other similar document?
- D-F. Did this transfer result in the creation or a joint tenancy in which the seller (transferor) remains as one of the joint tenants?
- D-G. Does this transfer return property to the person who created the joint tenancy (original transferor)?
- D-H. Is this transfer of property:
 - 1. to a revocable trust that may be revoked by the transferor and is for the benefit of the transferor transferor's spouse?
 - 2. to a trust that may be revoked by the Creator/Grantor who is also a joint tenant, and which names the other joint tenant(s) as beneficiaries when the Creator/Grantor dies?
 - 3. to an irrevocable trust for the benefit of the Creator/Grantor and/or Grantor's spouse?
 - 4. to an irrevocable trust from which the property reverts to the Creator/Grantor within 12 years?
- D-I. If this property is subject to a lease, is the remaining lease term 35 years or more including written options?
- D-J. IS THIS TRANSFER BETWEEN PARENT(S) AND CHILD(REN) OR FROM GRANDPARENT(S) TO GRANDCHILD(REN)?
- D-K. Is this transaction to replace a principal residence by a person 55 years of age or older?
Within the same County? Yes No
- D-L. Is this transaction to replace a principal residence by a person who is severely disabled as defined by Revenue and Taxation Code Section 69.5? Within the same County? Yes No
- D-M. Is this transfer solely between domestic partners currently registered with the California Secretary of State?

*If you checked yes to J, K, or L, you may qualify for a property tax reassessment exclusion, which may result in lower taxes on your property. IF YOU DO NOT FILE A CLAIM, YOUR PROPERTY WILL BE REASSESSED.

Please provide any other information that would help the Assessor to understand the nature of the transfer.

If the conveying document constitutes an exclusion from a change in ownership as defined in section 62 of the Revenue and Taxation Code for any reason other than those listed above, set forth the specific exclusions claimed:

Please answer all questions in each section. If a question does not apply, indicate with "N/A." Sign and date at bottom of second page.

PART II: OTHER TRANSFER INFORMATION

A. Date of transfer if other than recording date

B. Type of transfer. Please check appropriate box.

<input type="checkbox"/> Purchase	<input type="checkbox"/> Foreclosure	<input type="checkbox"/> Gift	<input type="checkbox"/> Trade or Exchange	<input type="checkbox"/> Merger, Stock, or Partnership Acquisition
-----------------------------------	--------------------------------------	-------------------------------	--	--

<input type="checkbox"/> Contract of Sale - Date of Contract	<input type="checkbox"/> Other: Please explain: _____
--	---

<input type="checkbox"/> Inheritance - Date of Death	<input type="checkbox"/> Other: Please explain: _____
--	---

<input type="checkbox"/> Creation of Lease	<input type="checkbox"/> Assignment of Lease	<input type="checkbox"/> Termination of Lease	<input type="checkbox"/> Sale/Leaseback
--	--	---	---

<input type="checkbox"/> Date Lease Began	<input type="checkbox"/> Original term in years (including written options)
---	---

<input type="checkbox"/> Remaining term in years (including written options)	<input type="checkbox"/> Monthly Payment _____ Remaining Term _____
--	---

C. Was only a partial interest in the property transferred? Yes No

If yes, indicate the percentage transferred %.

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Please write Assessor's Parcel Number(s): 058-0206-011

Please answer, to the best of your knowledge, all applicable questions, then sign and date. If a question does not apply, indicate with "N/A".

PART III: PURCHASE PRICE AND TERMS OF SALE**A. CASH DOWN PAYMENT OR value of trade or exchange (excluding closing costs)**

Amount \$ _____

- FIRST DEED OF TRUST @ % Interest for ____ years. Pymts./Mo=\$_____ (Prin & Int only) Amount \$ _____
 FHA (Discount Points) Fixed Rate New Loan
 Conventional Variable Rate Assumed Existing Loan Balance
 VA (Discount Points) All Inclusive D.T. (\$_____) Wrapped Bank or Savings & Loan
 Cal-Vet Loan Carried by Seller Finance Company
Balloon Payment Yes No Due Date _____ Amount \$ _____

C. SECOND DEED OF TRUST @ % interest for ____ years. Pymts./Mo=\$_____ (Prin & Int only) Amount \$ _____

- Fixed Rate New Loan
 Variable Rate Assumed Existing Loan Balance
 No Due Date _____ Amount \$ _____

D. OTHER FINANCING: Is other financing involved not covered in (b) or (c) above? Yes No Amount \$ _____

- Type _____ @ % interest for ____ years. Pymts./Mo=\$_____ (Prin & Int only)
 Bank or Savings & Loan Fixed Rate New Loan
 Loan Carried by Seller Variable Rate Assumed Existing Loan Balance
Balloon Payment Yes No Due Date _____ Amount \$ _____

E. Was an Improvement Bond assumed by the Buyer? Yes No Outstanding Balance: Amount \$ _____**F. TOTAL PURCHASE PRICE (or acquisition price, if traded or exchanged, include real estate commission if paid.)**

TOTAL ITEMS A THROUGH E \$ _____

G. PROPERTY PURCHASED Through a Broker Direct from Seller From a family member Other (please explain)

If purchased through a broker, provide broker's name and phone number.
Please explain any special terms, seller concessions, or financing and any other information that would help the Assessor understand the purchase price and terms of sale.

PART IV: PROPERTY INFORMATION**A. TYPE OF PROPERTY TRANSFERRED:**

- Single-Family Residence Agricultural Timeshare
 Multiple-family residence (no. of units: _____) Co-op/Own-your own Manufactured Home
 Commercial/Industrial Condominium Unimproved lot
 Other (Description: _____)

B. IS THIS PROPERTY INTENDED AS YOUR PRINCIPAL RESIDENCE? YES NO

If yes, enter date of occupancy 4/1/09 intended occupancy / / (month) (day) (year) / / (month) (day) (year)

C. IS PERSONAL/BUSINESS PROPERTY INCLUDED IN PURCHASE PRICE (i.e. furniture, farm equipment, machinery, etc.)

(other than a manufactured home subject to local property tax)? Yes No
If yes, enter the value of the personal/business property included in the purchase price \$ _____ (Must attach itemized list.)

D. IS A MANUFACTURED HOME INCLUDED IN PURCHASE PRICE? Yes No

If yes, how much of the purchase price is allocated to the manufactured home? \$ _____

Is the manufactured home subject to local property tax? Yes No What is the decal number? _____

E. DOES THE PROPERTY PRODUCE INCOME? Yes No If yes, is the income from:

Lease/Rent Contract Mineral Rights Other (please explain): _____

F. WHAT WAS THE CONDITION OF THE PROPERTY AT THE TIME OF SALE?

Good Average Fair Poor

Please explain the physical condition of the property and provide any other information (such as restrictions, etc.) that would assist the Assessor in determining the value of the property.

CERTIFICATION**OWNERSHIP TYPE (v)**

- Proprietorship
Partnership
Corporation
Other

I certify that the foregoing is true, correct and complete to the best of my knowledge and belief.
This declaration is binding on each and every co-owner and/or partner.

NAME OF NEW OWNER / CORPORATE OFFICER

ARDIM LOUISE FERRIS AS TRUSTEE OF CASTANA TRUST
SIGNATURE OF NEW OWNER / CORPORATE OFFICER

TITLE

3/4/09 TRUSTEE

DATE

3/4/09

FEDERAL EMPLOYER ID NUMBER

NAME OF ENTITY (if applicable)

ARDIM FERRIS
ADDRESS (typed or printed)

2428 GLENFAD DR

MANHATTAN CA 95676

TELEPHONE NUMBER (8am - 5pm)
916-335-0424

E-MAIL ADDRESS (optional)

Note: The Assessor may contact you for further information.
If a document evidencing a change of ownership is presented to the recorder for recordation without the concurrent filing of a preliminary change of ownership report, the recorder may charge an additional recording fee of twenty dollars (\$20).

CASTANA TRUST**ARTICLE ONE****CREATION OF TRUST**

- 1.1. Parties. This trust agreement is made by Ardit Louise Ferris (the "settlor" and "trustee") of Sacramento County, California. The settlor hereby transfers and assigns to the trustee certain property (the "trust estate"), in trust, to be held, administered, and distributed as provided in this instrument.
- 1.2. Names of Trusts. The trusts created by this instrument shall be known collectively as the Castana Trust, and each separate trust created under this instrument shall be referred to by adding the name or designation of that separate trust as it appears in the appropriate section of this instrument.
- 1.3. Effective Date. This agreement shall be effective immediately on execution by all the parties.
- 1.4. Marital Status. The settlor is unmarried.
- 1.5. Identification of Living Children. The settlor has two living children:

<u>Name</u>	<u>Date of Birth</u>
Steve K. Zinnel	12/31/63
David P. Zinnel	2/18/70

- 1.6. No Deceased Children. The settlor has no deceased children.
- 1.7. Definitions of Child, Children, and Issue. As used in this instrument, the terms "child" and "children" refer to all persons referred to in California *Probate Code* § 26, as in effect at the time of execution of this instrument, and the term "issue" refers to all persons referred to in California *Probate Code* § 50, as in effect at the time of execution of this instrument.

ARTICLE TWO

TRUST ESTATE

- 2.1. Definition of Trust Estate. All property subject to this instrument from time to time is referred to as the "trust estate" and shall be held, administered, and distributed as provided in this instrument. The trustee shall hold, administer, and distribute the property described in any schedules of property (which are attached hereto and made a part of this trust instrument), any other property that may be hereafter subject to this trust, and the income and proceeds attributable to all such property, in accordance with the provisions of this instrument.
- 2.2. Additions to Trust. From time to time, the trustee may accept additions to this trust from any source. All such additions shall become part of the trust estate and shall be held, administered, and distributed in accordance with the terms of this instrument. That additional property shall become part of the trust estate on written acceptance of it by the trustee. Any additions to the trust shall be made by designating in writing the property to be added. However, the titling of any account, deed, or similar asset in the name of the trustee, as trustee of this trust, or any alternate or successor trustee acting under this instrument, shall be deemed to be a transfer to this trust. Any designation by a third

party, whether by will, deed, account title designation, or similar transfer, shall also be a transfer to the trust estate.

ARTICLE THREE

RIGHTS AND POWERS OF SETTLOR

- 3.1. Power of Revocation and Amendment. Any trust created by this instrument may be amended, revoked, or terminated by the settlor, in whole or in part, at any time during her lifetime. After the settlor's death, any trust created by this instrument shall be irrevocable and not subject to amendment.
- 3.2. Method of Revocation or Amendment. Any amendment, revocation, or termination of any trust created by this instrument shall be made by written instrument signed by the settlor and delivered to the trustee. An exercise of the power of amendment substantially affecting the duties, rights, and liabilities of the trustee shall be effective only if agreed to by the trustee in writing.
- 3.3. Delivery of Property After Revocation. After any revocation or termination, the trustee shall promptly deliver the designated property to the settlor.
- 3.4. Trustee's Retention of Assets on Revocation. In the event of any revocation of all or part of the trust, the trustee shall be entitled to retain sufficient assets to reasonably secure the payment of liabilities the trustee has lawfully incurred in administering the trust and any fees that have been earned by the trustee, until such time as those liabilities have been discharged and fees paid, unless the settlor indemnifies the trustee against loss or expense.
- 3.5. Settlor's Power to Borrow From Trust Estate. Notwithstanding any other provision in this instrument, during the settlor's lifetime, the settlor may borrow from the income or principal of the trust estate, with or without security, such amounts on such terms as the

settlor specifies in a signed writing filed with the trustee.

- 3.6. No Exercise of Rights and Powers of Settlor By Others. The rights and powers of the settlor as provided in this instrument, including any power to amend, revoke, or terminate any trust created by this instrument, are personal to the settlor and may not be exercised by any other person or entity.

ARTICLE FOUR

DISTRIBUTIONS DURING SETTGOR'S LIFE

- 4.1. Payment of Income During Settlor's Life. So long as the settlor is living, the trustee shall pay to or apply for the benefit of the settlor all of the net income of the trust, in monthly or other convenient installments (but not less often than annually) as the settlor and the trustee may agree on from time to time.
- 4.2. Distributions of Principal During Settlor's Lifetime. From time to time during the settlor's lifetime, the trustee shall distribute to or apply for the benefit of the settlor as much of the principal of the trust as the trustee, in the trustee's discretion, deems proper for the settlor's comfort, welfare, and happiness. In exercising discretion, the trustee shall give the consideration that the trustee deems proper to all other income and resources then readily available to the settlor for use for these purposes and that are then known to the trustee. All decisions of the trustee regarding payments under this section, if any, are within the trustee's discretion and shall be final and incontestable by anyone.
- 4.3. Distributions of Principal at Request of Settlor. During the settlor's lifetime, the trustee shall distribute to the settlor such amounts from the principal of the trust, up to the whole thereof, as the settlor may from time to time request of the trustee in writing.
- 4.4. Requests in Behalf of the Settlor Unable to Do So Personally. If, at any time, the settlor is unable personally to make a request of the trustee to withdraw principal of the trust, the

settlor's right to make the request may be exercised for or in her behalf by an attorney in fact who, at the time of the exercise, is duly appointed and acting for the settlor under a valid and enforceable durable power of attorney executed by the settlor under the Uniform Durable Power of Attorney Act, or any successor statute. If there is no such attorney in fact, then the trustee shall have the discretion to make any principal distribution to or for the benefit of the settlor that the settlor could have requested personally if she were able to do so. In making any principal distribution under this section (whether pursuant to a request by an attorney in fact or not), the trustee shall pay as much of the principal as the trustee, in the trustee's discretion, deems necessary for the settlor's health, education, support, and maintenance. The trustee shall have discretion to determine when the settlor is unable personally to request principal payments from the trustee for purposes of this section.

- 4.5. Trustee's Power to Make Gifts at Direction of Settlor. During the settlor's lifetime, the trustee shall distribute such sums of trust principal to such person or persons who are the natural objects of the settlor's bounty, as the settlor may direct in writing. In the event that the settlor is unable to direct the trustee in writing under this section due to incapacity, such direction may be made on the settlor's behalf by a duly authorized attorney in fact acting under a valid durable power of attorney executed by the settlor under the Uniform Durable Power of Attorney Act (or successor statute); provided, however, that the amount of such gifts pursuant to the direction of an attorney in fact to any one person in any one year shall not exceed the annual amount excluded from gift tax under Section 2503(b) of the Internal Revenue Code (or successor statute).

ARTICLE FIVE

DISTRIBUTIONS AFTER SETTLOR'S DEATH

5.1. Payment of Death Taxes, Debts, and Expenses on Statement From Personal Representative.

After the settlor's death, on receipt by the trustee of a written statement from the personal representative of the settlor's estate requesting that the trustee pay death taxes, debts, and expenses (as defined in Article Eight), with respect to any property in the settlor's estate, the trustee shall pay, either directly or to the personal representative, any amounts requested by the personal representative for those purposes, in the manner specified below. The trustee may rely on the personal representative's statement and shall not be liable for any act or omission by the personal representative in protesting or failing to protest the legality, propriety, or amount of the death taxes, debts, or expenses. If there is no personal representative, the trustee shall make the payments directly. Payments of debts and expenses shall be made by the trustee from the trust estate. All death taxes payable by reason of the settlor's death shall also be paid by the trustee from the trust estate.

5.2. Trustee's Power to Defer Division or Distribution. Whenever the trustee is directed to divide any part of the trust estate or distribute trust assets on the death of the settlor, the trustee may, in the trustee's discretion, defer actual division or distribution for such reasonable period of time as is needed to effectively identify, take possession of, value, divide, and distribute the assets of the trust. During this time of deferral, the trustee may manage the trust assets through a single administrative trust. The ability of the trustee to delay division or distribution shall not affect the vesting of interests, which shall be as of the date of death.

5.3. Distribution of specific trust assets. On the settlor's death, the trustee is directed to distribute the following specific assets:

See Exhibit 1 attached hereto.

Exhibit 1 attached hereto, which may be amended from time to time at the Settlor's sole discretion. To be effective and operative, the attached "Exhibit" I must be signed and dated by Ardithe Ferris as the Settlor and Trustee. In the event of a conflict, the most recently signed and dated "Exhibit 1" is operative.

5.4 Disposition of Remaining Trust Estate. On the settlor's death, the remaining trust estate shall be disposed of:

(a) If any children of the settlor survive her, the trustee shall divide the trust property into as many shares of equal market value as are necessary to create one share for each of the settlor's children who survive her and one share for each of the settlor's children who predecease her but who leave issue surviving her, as limited by subparagraph (f) below.

(b) Each share created for a deceased child shall be distributed to the then-living issue of that deceased child in the manner provided in California *Probate Code* § 246. If an individual issue of a deceased child has reached the age of 25 years at the death of the settlor, the trustee shall distribute that issue's share outright to that issue; if an individual issue of a deceased child has not reached the age of 25 years at the death of the settlor, the trustee shall continue to hold, administer, and distribute that issue's share in a separate trust for that issue according to the terms set forth in Article Six applicable to the Separate Share Trust for Issue.

- (c) If none of the children of the settlor survive her, but the settlor leaves issue surviving, the trustee shall distribute the trust property to those issue, who are to take that property in the manner provided in California *Probate Code* § 246. If an individual issue has reached the age of 25 years at the death of the settlor, the trustee shall distribute that issue's share outright to that issue; if an individual issue has not reached the age of 25 years at the death of the settlor, the trustee shall continue to hold, administer, and distribute that issue's share in a separate trust for that issue according to the terms set forth in Article Six applicable to the Separate Share Trust for Issue.
- (d) If none of the issue of the settlor survive her, the trust property shall be distributed outright to the settlor's heirs.
- (e) Any business owned by settlor, regardless of the form of the business (i.e., sole proprietorship, Corporations, Limited Liability Companies) shall be immediately distributed free of trust to Settlor's heirs.

ARTICLE SIX
DISPOSITIVE PROVISIONS OF TRUST CREATED
AFTER SETTLOR'S DEATH

- 6.1. Spendthrift Clause: The interests of the beneficiaries under this instrument are not transferable by voluntary or involuntary assignment or by operation of law, and shall be free from the claims of creditors and from attachment, execution, bankruptcy, and other

legal process, to the maximum extent permitted by law. If any such transfer is made or attempted by or against any beneficiary, all further trust payments of income or principal or both to that beneficiary (and any right of that beneficiary to such payments) shall be suspended for a period of time or indefinitely (but in no case for longer than the term of the trust) as the trustee determines. In lieu of payments to that beneficiary, the trustee may apply so much of the trust income or principal or both to which the beneficiary would otherwise be entitled as the trustee deems necessary for the beneficiary's education and support. All trust income (to which the beneficiary would otherwise be entitled) not so applied shall in the discretion of the trustee be accumulated and added to trust at such time or times as the trustee deems proper.

ARTICLE SEVEN

TRUSTEE

7.1. Settlor's Power to Designate Successor Trustees. Initially, Settlor designates Steve A. Zinnel, Settlor's son as her Successor Trustee. However, at any time, the settlor may designate any suitable person or entity to act as a successor trustee if the trustee dies, becomes incapacitated, or is otherwise unable or unwilling to continue to act as trustee or co-trustee. Any designation under this section shall be made by a signed writing delivered to the person or entity designated as successor trustee or co-trustee. If more than one designation is made under this section, only the most recent designation shall be valid.

7.2. Not Used.

7.3. Successor Trustees. If the office of trustee becomes vacant by reason of death, incapacity, or any other reason, and no successor trustee or co-trustees have been designated under any

other provision of this trust instrument, a new trustee or co-trustee shall be appointed by the court.

- 7.4. Definition of Trustee. Reference in this instrument to "the trustee" shall be deemed a reference to whoever is serving as trustee or co-trustees, and shall include alternate or successor trustees or co-trustees, unless the context requires otherwise.
- 7.5. Removal and Replacement of Trustee by Settlor. The settlor shall have the power, at any time and for any reason, with or without cause, to remove any trustee acting under this instrument, and notwithstanding any other provision of this instrument, designate another trustee to replace the removed trustee. Removal shall be effected by giving a written notice of removal to the trustee to be removed and to the designated successor. The removal shall become effective on the delivery to the settlor of a written acceptance of the trust by the successor trustee, and the settlor shall promptly notify the trustee being removed of the receipt of that acceptance.
- 7.6. Waiver of Bond. No bond or undertaking shall be required of any individual who serves as a trustee under this instrument.
- 7.7. Procedure for Resignation. Any trustee may resign at any time, without giving a reason for the resignation, by giving written notice, at least ninety (90) days before the time the resignation is to take effect, to the settlor, if living, to any other trustee then acting, to any persons authorized to designate a successor trustee, to all trust beneficiaries known to the trustee (or, in the case of a minor beneficiary, to the parent or guardian of that beneficiary) and to the successor trustee. A resignation shall be effective on written acceptance of the trust by the successor trustee.
- 7.8. General Powers of Trustee. To carry out the purposes of the trusts created under this instrument, and subject to any limitations stated elsewhere in this instrument, the trustee

shall have all of the following powers, in addition to all of the powers now or hereafter conferred on trustees by law:

- (a) With or without court authorization, sell (for cash or on deferred payments, and with or without security), convey, exchange, partition, and divide trust property; grant options for the sale or exchange of trust property for any purpose, whether the contract is to be performed or the option is to be exercised within or beyond the term of the trust; and lease trust property for any purpose, for terms within or extending beyond the expiration of the trust, regardless of whether the leased property is commercial or residential and regardless of the number of units leased.
- (b) Engage in any transactions with the personal representative of the estate of the settlor that are in the best interest of any trusts created in this instrument.
- (c) Manage, control, improve, and maintain all real and personal trust property.
- (d) Subdivide or develop land; make or obtain the vacation of plats and adjust boundaries, or adjust differences in valuation on exchange or partition by giving or receiving consideration; and dedicate land or easements to public use with or without consideration.
- (e) Make ordinary or extraordinary repairs or alterations in buildings or other trust property, demolish any improvements, raze existing party walls or buildings, and erect new party walls or buildings, as the trustee deems advisable.
- (f) Employ and discharge agents and employees, including but not limited to attorneys, accountants, investment and other advisers, custodians of assets, property managers, real estate agents and brokers, and appraisers, to advise and assist the trustee in the management of any trusts created under this trust instrument, and compensate them from the trust property.

- (g) With respect to securities held in trust, exercise all the rights, powers, and privileges of an owner, including, but not limited to, the power to vote, give proxies, and pay assessments and other sums deemed by the trustee necessary for the protection of the trust property; participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers, and liquidations, and, in connection therewith, deposit securities with and transfer title to any protective or other committee under such terms as the trustee deems advisable; exercise or sell stock subscription or conversion rights; and accept and retain as investments of the trust any securities or other property received through the exercise of any of the foregoing powers.
- (h) Hold securities or other trust property in the trustee's own name or in the name of a nominee, with or without disclosure of the trust, or in unregistered form, so that title may pass by delivery.
- (i) Deposit securities in a securities depository that is either licensed or exempt from licensing.
- (j) Borrow money for any trust purpose from any person or entity, including one acting as trustee hereunder, on such terms and conditions as the trustee deems advisable, and obligate the trust for repayment; encumber any trust property by mortgage, deed of trust, pledge, or otherwise, whether for terms within or extending beyond the term of the trust, as the trustee deems advisable, to secure repayment of any such loan; replace, renew, and extend any such loan or encumbrance; and pay loans or other obligations of the trust deemed advisable by the trustee.
- (k) Procure and carry, at the expense of the trust, insurance in such forms and in such

amounts as the trustee deems advisable to protect the trust property against damage or loss, and to protect the trustee against liability with respect to third persons.

(l) Enforce any obligation owing to the trust, including any obligation secured by a deed of trust, mortgage, or pledge held as trust property, and purchase any property subject to a security instrument held as trust property at any sale under the instrument.

(m) Extend the time for payment of any note or other obligation held as an asset of, and owing to, the trust, including accrued or future interest, and extend the time for repayment beyond the term of the trust.

(n) Pay or contest any claim against the trust; release or prosecute any claim in favor of the trust; or, in lieu of payment, contest, release, or prosecution, adjust, compromise, or settle any such claim, in whole or in part, and with or without consideration.

(o) At trust expense, prosecute or defend actions, claims, or proceedings of whatever kind for the protection of the trust property and of the trustee in the performance of the trustee's duties, and employ and compensate attorneys, advisers, and other agents as the trustee deems advisable.

7.9. Power to Retain Trust Property. The trustee shall have the power to retain property received into the trust at its inception or later added to the trust, as long as the trustee considers that retention in the best interests of the trust or in furtherance of the goals of the settlor in creating the trust, as determined from this trust instrument, but subject to the standards of the prudent investor rule as set forth in the California *Uniform Prudent Investor Act*, as amended from time to time.

- 7.10. Trustee's Power to Invest Property. Subject to the standards of the prudent investor rule as stated in the California Uniform Prudent Investor Act, as amended from time to time, the trustee shall have the power to invest and manage the trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust.
- 7.11. Power Over Unproductive Property. The trustee shall have the power to retain or acquire unproductive or underproductive property.
- 7.12. Power to Operate Business. The trustee shall have the power to hold and operate any business or enterprise that is or becomes trust property, on such terms and for such a time as the trustee, in the trustee's discretion, deems advisable; to purchase, acquire, invest in, or otherwise participate in, any business or other enterprise on behalf of the trust; or to sell, dissolve, liquidate, or terminate any such business. The trustee shall also have the power to incorporate, reorganize, or otherwise change the form of a business or enterprise that is part of the trust, through merger or consolidation of two or more enterprises or otherwise, and to participate in that business or enterprise as a sole proprietor, as a general or limited partner, as a shareholder, or in any other capacity. Any operation, sale, purchase, acquisition, investment in, or dissolution or liquidation of a business interest, in good faith, shall be at the risk of the trust, and without liability on the part of the trustee for any resulting losses. The trustee shall also have the power to contribute capital or loan money to the business or enterprise on such terms and conditions as the trustee deems advisable.
- 7.13. Power to Operate Farm or Ranch. The trustee shall have the power to continue to hold, operate, sell, purchase, acquire, invest in, or liquidate any farming or ranch property, or any interest in farming or ranching property, whether organized as a sole proprietorship,

general or limited partnership, corporation, or otherwise, on such terms and for such time as the trustee, in the trustee's discretion, deems advisable. Any such operation, sale, purchase, acquisition, investment, or liquidation, in good faith, shall be at the risk of the trust and without liability on the part of the trustee for any resulting losses. The trustee shall have all powers necessary or appropriate to carry out the management of such farming and ranching property. The trustee shall also have the power to incorporate any farming or ranching property, or any interest therein, and to hold the stock as a trust asset; to borrow money for any purpose related to the operation, or the acquisition or disposition, of any such farming or ranching interests; and to employ agents in the management and operation of that property. The net profits and losses from the farming and ranching operations conducted by the trust shall be computed in accordance with recognized methods of accounting for comparable activities. The net profits from these activities shall become trust income. The net losses from these activities shall not reduce other trust income for the fiscal or calendar year during which they occur, but shall be carried into subsequent fiscal or calendar years and reduce the net profits of the business for those years.

7.14. Power to Combine Trust Assets. Each trust created under this instrument shall constitute a separate trust and be administered accordingly; however, the assets of all of the trusts may be combined for bookkeeping purposes and held for the trust beneficiaries without physical division into separate trusts until time of distribution.

7.15. Early Termination of Trusts. The trustee shall have the power, in the trustee's discretion, to terminate any trust created under this trust instrument whenever the fair market value of the trust falls below twenty-five thousand dollars (\$25,000), or becomes so small in relation to the costs of administration as to make continuing

administration uneconomical. Continuing administration shall be uneconomical if the trustee determines that, with reference to the trust fee schedules then in effect for corporate fiduciaries in the area in which the trust is being administered, the trust would be subject to the minimum trust administration fees of those fiduciaries, regardless of the value of the trust. On termination, the trustee shall distribute the principal and any accrued or undistributed net income to the income beneficiaries in proportion to their shares of the income. If no fixed amount of income is payable to specific beneficiaries, the trustee shall distribute the principal and any accrued or undistributed net income in equal shares to those beneficiaries who would then be entitled to income payments from the trust.

7.16. Division or Distribution in Cash or Kind. In order to satisfy a pecuniary gift or to distribute or divide trust assets into shares or partial shares, the trustee may distribute or divide those assets in kind, or divide undivided interests in those assets, or sell all or any part of those assets and distribute or divide the property in cash, in kind, or partly in cash and partly in kind. Property distributed to satisfy a pecuniary gift under this instrument shall be valued at its fair market value at the time of distribution.

7.17. Payments to Legally Incapacitated Persons. If at any time any trust beneficiary is a minor, or it appears to the trustee that any trust beneficiary is incapacitated, incompetent, or for any other reason not able to receive payments or make intelligent or responsible use of the payments, then the trustee, in lieu of making direct payments to the trust beneficiary, may make payments to the beneficiary's conservator or guardian; to the beneficiary's custodian under the Uniform Gifts to Minors Act or Uniform Transfers to Minors Act of any state; to one or more suitable persons as the trustee deems proper, such as a relative of or a person residing with the beneficiary, to be used for the beneficiary's benefit; to any other person, firm, or agency for services rendered or to be rendered for

the beneficiary's assistance or benefit; or to accounts in the beneficiary's name with financial institutions. The receipt of payments by any of the foregoing shall constitute a sufficient acquittance of the trustee for all purposes.

- 7.18. Trustee's Liability. No trustee shall be liable to any interested party for acts or omissions of that trustee, except those resulting from that trustee's willful misconduct or gross negligence. This standard shall also apply regarding a trustee's liability for the acts or affected by that event.
- 7.19. Written Notice to Trustee. Until the trustee receives written notice of any death other event on which the right to payments from any trust may depend, the trustee shall incur no liability for disbursements made in good faith to persons whose interests may have been omissions of any co-trustee, predecessor trustee, or agent employed by the trustee.
- 7.20. Duty to Account. The trustee shall render accounts at least annually, at the termination of a trust, and on a change of trustees, to the persons and in the manner required by law.

ARTICLE EIGHT

CONCLUDING PROVISIONS

- 8.1. Perpetuities Savings Clause. Notwithstanding any other provision of this instrument, every trust created by this instrument shall terminate no later than twenty-one (21) years after the death of the last survivor of the Settlor's issue who are alive at the creation of the trust. For purposes of this perpetuities savings clause, a trust shall be deemed to have been created on the date the trust becomes irrevocable or the date of the death of the settlor, whichever occurs first. If a trust is terminated under this section, the trustee shall

distribute all of the principal and undistributed income of the trust to the income beneficiaries of the trust in the proportion in which they are entitled (or eligible, in the case of discretionary payments) to receive income immediately before the termination. If that proportion is not fixed by the terms of the trust, the trustee shall distribute all of the trust property to the persons then entitled or eligible to receive income from the trust outright in a manner that, in the trustee's opinion, will give effect to the intent of the settlor in creating the trust. The trustee's decision is to be final and incontestable by anyone.

- 8.2. Simultaneous Death. If any beneficiary under this instrument and the settlor die under circumstances in which the order of their deaths cannot be established by clear and convincing evidence, the settlor shall be deemed to have survived the beneficiary, and the provisions of this instrument shall be construed accordingly.
- 8.3. Survivorship Requirement. For the purposes of this instrument, a beneficiary shall be deemed not to have survived the settlor if that beneficiary dies within six months after the settlor's death.
- 8.4. No-Contest Clause. If any beneficiary under this instrument, singularly or in combination with any other person or persons, directly or indirectly contests this instrument, any amendment to this instrument, or the will of the settlor in whole or in part, or opposes, objects to, or seeks to invalidate any of the provisions of this instrument or the will of the settlor, or seeks to succeed to any part of the estate of the settlor other than in the manner specified in this instrument or in the will of the settlor, then the right of that person to take any interest given to him or her by this instrument or any amendment to this instrument shall be void, and any gift or other interest in the trust property to which the beneficiary would otherwise have been entitled shall pass as if he or she had predeceased the settlor without issue. Settlor specifically exempts petitions under

California Probate Code §§ 9860, 17200 or 17200.1 from the effect of this clause.

8.5. Definitions of Death Taxes, Debts, and Expenses. As used in this instrument, the following definitions apply:

- (a) The term "death taxes" shall mean all inheritance, estate, succession, and other similar taxes that are payable by any person on account of that person's interest in the estate of the settlor or by reason of the settlor's death, including penalties and interest, but excluding the following: (i) any additional tax that may be assessed under Internal Revenue Code Section 2032A; and (ii) any federal or state tax imposed on any generation-skipping transfer, as that term is defined in the federal tax laws, unless that generation-skipping transfer tax is payable directly out of the assets of a trust created by this instrument.
- (b) The term "debts and expenses" shall include the following: (i) all costs, expenses of litigation, counsel fees, or other charges that the trustee incurs in connection with the determination of the amount of the death taxes, interest, or penalties referred to in subsection (a) of this section; and (ii) legally enforceable debts, funeral expenses, expenses of last illness, and administration and property expenses.

8.6. Definition of Incapacity. As used in this instrument, "incapacity" or "incapacitated" means a person operating under a legal disability such as a duly established conservatorship, or a person who is unable to do either of the following:

- (a) Provide properly for that person's own needs for physical health, food, clothing, or shelter; or
- (b) Manage substantially that person's own financial resources, or resist fraud or undue

influence.

8.7. Definition of Education. As used in this instrument, the term "education" refers to the following:

- (a) Education at public or private elementary, junior high, middle, or high schools, including boarding schools;
- (b) Undergraduate, graduate, and postgraduate study in any field, whether or not of a professional character, in colleges, universities, or other institutions of higher learning;
- (c) Specialized formal or informal training in music, the stage, the handicrafts, or the arts, whether by private instruction or otherwise; and
- (d) Formal or informal vocational or technical training, whether through programs or institutions devoted solely to vocational or technical training, or otherwise.

8.8. Captions. The captions appearing in this instrument are for convenience of reference only, and shall be disregarded in determining the meaning and effect of the provisions of this instrument.

8.9. Severability Clause. If any provision of this instrument is invalid, that provision shall be disregarded, and the remainder of this instrument shall be construed as if the invalid provision had not been included.

8.10. California Law to Apply. All questions concerning the validity, interpretation, and administration of this instrument, including any trusts created under this instrument, shall be governed by the laws of the State of California, regardless of the domicile of any trustee or beneficiary.

8.11. Distribution to Issue. If a division of property is to be made under this instrument among the issue of an individual, who is referred to in this section as the Designated Ancestor,

that division shall be made in the manner set forth in California *Probate Code* § 246. Accordingly, that division shall be made at the generation of the Designated Ancestor's children, regardless of whether any of those children survive the Designated Ancestor. The property shall be divided into as many equal shares as there are children of the Designated Ancestor who survive the Designated Ancestor (if any) plus deceased children of the Designated Ancestor who leave issue who survive the Designated Ancestor. Each child of the Designated Ancestor who survives the Designated Ancestor shall receive one such equal share. The equal share of each deceased child of the Designated Ancestor who leaves issue who survive the Designated Ancestor shall in turn be divided among that deceased child's issue who survive the designated ancestor in the manner described in this section as if the deceased child were the Designated Ancestor as to that share.

8.12. Gifts to Heirs. For any gift to "heirs" of the settlor that is made in this instrument, those heirs shall be determined as if the settlor had died intestate at the time for distribution prescribed in this instrument, and the identity and shares of those heirs shall be determined according to the California laws of succession that concern separate property not acquired from a previously deceased spouse and that are in effect at the time the settlor is deemed to have died.

ARTICLE NINE

SIGNATURE AND EXECUTION

9.1. Execution. I certify that I have read the foregoing trust agreement and that it correctly states the terms and conditions under which the trust estate is to be held, administered, and

distributed. The settlor approves this trust agreement in all particulars. The trustee approves and accepts the trusts provided for in this trust agreement.

Executed on March 4, 2009 at Gold River, California.

SETTLOR



Ardith Louise Ferris, Settlor

TRUSTEE



Ardith Louise Ferris, Trustee

California All-Purpose Acknowledgment

State of California)

) SS

County of Calaveras)

On March 4, 2009, before me, Jayleyne Goltz, a notary public in and for the State of California, personally appeared Ardit Louise Ferris, personally who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


Notary Public

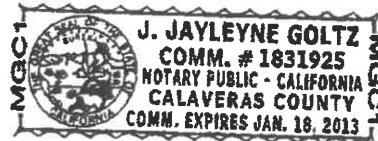


EXHIBIT 1

**DISTRIBUTION OF SPECIFIC TRUST ASSETS OF
CASTANA TRUST**

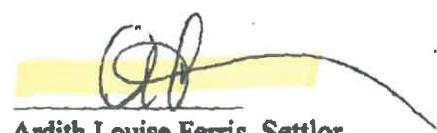
Pursuant to paragraph 5.3 of the Total Trust, initially established on March 4, 2009, on the settlor's death, the trustee is directed to distribute the following specific assets:

None at this time.

I certify that this "Exhibit 1", distributing specific assets, shall be effective immediately on execution by me and that any former "Exhibit 1" distributing specific assets are hereby expressly revoked.

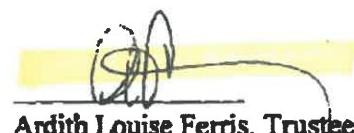
Executed on March 4, 2009 at Gold River, California.

SETTLOR



Ardith Louise Ferris, Settlor

TRUSTEE



Ardith Louise Ferris, Trustee

LAST WILL AND TESTAMENT OF
ARDITH LOUISE FERRIS

I, ARDITH LOUISE FERRIS, formerly known as Ardith Louise Zinnel, residing in the County of Sacramento, State of California, hereby make, publish, and declare this to be my Last Will and Testament. I hereby expressly revoke any and all former Wills, Codicils, and Trusts that I have previously made.

ARTICLE ONE

INTRODUCTORY PROVISIONS

- 1.1 Marital Status. I am not currently married.
- 1.2 Identification of Living Children. I have two living children, as follows:

<u>Names</u>	<u>Date of Birth</u>
Steve K. Zinnel	12/31/63
David P. Zinnel	2/18/70

- 1.3 No Deceased Children. I have no deceased children.

ARTICLE TWO

GIFT OF THE ENTIRE ESTATE

- 2.1 Gift of Entire Estate. I give all of my property to the trustees of the Castana Trust, created under the trust agreement executed on the same date as, but immediately before, the execution of this will, by Ardith Louise Ferris, as Settlor. The trustee of that trust shall add the property disposed of under this will to the trust principal and hold, administer, and distribute the property in accordance with the provisions of that trust agreement, including any amendments of that trust agreement that have been made before or after execution of this will.

ARTICLE THREE

RESIDUARY PROVISIONS

3.1. Disposition of Residue. If the Castana Trust has been revoked, terminated, or declared invalid for any reason, I give the residue of my estate to the executor of this will, as trustee, who shall hold, administer, and distribute the property under a testamentary trust, the terms of which shall be identical to the terms of the Castana Trust that are in effect on the date of execution of this will or such later date on which this will is republished.

ARTICLE FOUR

EXECUTOR

- 4.1. Nomination of Executor. I nominate Steve K. Zinnel of 11966 Old Eureka Way, Gold River, California 95670, whose telephone number is (916) 402-2640, as executor of this will.
- 4.2. Successor Executors. If Steve K. Zinnel is unable (by reason of death, incapacity, or any other reason) or unwilling to serve as executor, or if at any time the office of executor becomes vacant, by reason of death, incapacity, or any other reason, and no successor executor or coexecutors have been designated under any other provision of this will, then I nominate David P. Zinnel, my son, as successor executor. If David P. Zinnel is unwilling or unable to serve as successor executor, a new executor or coexecutors shall be appointed by the Court.
- 4.3. Waiver of Bond. No bond or undertaking shall be required of any executor nominated in this will.

4.4. General Powers of Executor. The executor shall have full authority to administer my estate under the California *Independent Administration of Estates Act*. The executor shall have all powers now or hereafter conferred on executors by law, except as otherwise specifically provided in this will, including any powers enumerated in this will.

4.5. Power to Invest. The executor shall have the power to invest estate funds in any kind of real or personal property, as the executor deems advisable.

4.6. Division or Distribution in Cash or in Kind. In order to satisfy a pecuniary gift or to distribute or divide estate assets into shares or partial shares, the executor may distribute or divide those assets in kind, or divide undivided interests in those assets, or sell all or any part of those assets and distribute or divide the property in cash, in kind, or partly in cash and partly in kind. Property distributed to satisfy a pecuniary gift under this will shall be valued at its fair market value at the time of distribution. This section shall apply only to the extent that it does not conflict with the provisions of the Castana Trust.

4.7. Power to Sell, Lease, and Grant Options to Purchase Property. The executor shall have the power to sell, at either public or private sale and with or without notice, lease, and grant options to purchase any real or personal property belonging to my estate, on such terms and conditions as the executor determines to be in the best interest of my estate.

4.8. Payments to Legally Incapacitated Persons. If at any time any beneficiary under this will is a minor or it appears to the executor that any beneficiary is incapacitated,

incompetent, or for any other reason not able to receive payments or make intelligent or responsible use of the payments, then the executor, in lieu of making direct payments to the beneficiary, may make payments to the beneficiary's conservator or guardian; to the beneficiary's custodian under the *Uniform Gifts to Minors Act* or *Uniform Transfers to Minors Act* of any state; to one or more suitable persons, as the executor deems proper, such as a relative or a person residing with the beneficiary, to be used for the benefit of the beneficiary; to any other person, firm, or agency for services rendered or to be rendered for the beneficiary's assistance or benefit; or to accounts in the beneficiary's name with financial institutions. The receipt of payments by any of the foregoing shall constitute a sufficient acquittance of the executor for all purposes.

ARTICLE FIVE

CONCLUDING PROVISIONS

5.1. Definition of Death Taxes. The term "death taxes," as used in this will, shall mean all inheritance, estate, succession, and other similar taxes that are payable by any person on account of that person's interest in my estate or by reason of my death, including penalties and interest, but excluding the following:

- (a) Any additional tax that may be assessed under *Internal Revenue Code* § 2032A.
- (b) Any federal or state tax imposed on a "generation-skipping transfer," as that term is defined in the federal tax laws, unless the applicable tax statutes provide that the generation-skipping transfer tax on that transfer is payable directly out of the assets of my gross estate.

5.2. Payment of Death Taxes. Pursuant to the trust agreement executed on the same

date as, but immediately before, the execution of this will by Ardith Louise Ferris, as Settlor, all death taxes, whether or not attributable to property inventoried in my probate estate, shall be paid by the trustee from that trust. If that trust does not exist at the time of my death, or if the assets of that trust are insufficient to pay the death taxes in full, I direct the executor to pay any death taxes, whether or not attributable to property inventoried in my probate estate, that cannot be paid by the trustee, by prorating and apportioning those taxes among the persons interested in my estate, as provided in the *California Probate Code*.

5.3. Simultaneous Death. If any beneficiary under this will and I die simultaneously, or if it cannot be established by clear and convincing evidence whether that beneficiary or I died first, I shall be deemed to have survived that beneficiary, and this will shall be construed accordingly.

5.4. Period of Survivorship. For the purposes of this will, a beneficiary shall not be deemed to have survived me if that beneficiary dies within six months after my death.

5.5. Intentional Omission of Children Born or Adopted After Execution of Will. Except as otherwise provided in this will, I have intentionally failed to provide in this will for any children born to or adopted by me after the execution of this will.

5.6. No-Contest Clause. If any person, directly or indirectly, contests the validity of this will in whole or in part, or opposes, objects to, or seeks to invalidate any of its provisions, or the validity of any contract, agreement (including any Trust Agreement), declaration of trust, beneficiary designation, or other document executed by me (or for my benefit) that is a part of my integrated estate plan, or

seeks to succeed to any part of my estate otherwise than in the manner specified in this will, any gift or other interest given to that person under this will shall be revoked and shall be disposed of as if he or she had predeceased me without issue. I specifically exempt petitions under California *Probate Code* §§ 9860, 17200 or 17200.1 from the effect of this clause.

5.7. Definition of Incapacity. As used in this will, "incapacity" or "incapacitated" means a person operating under a legal disability such as a duly established conservatorship, or a person who is unable to do either of the following:

- (a) Provide properly for that person's own needs for physical health, food, clothing, or shelter; or
- (b) Manage substantially that person's own financial resources, or resist fraud or undue influence.

5.8. Captions. The captions appearing in this will are for convenience of reference only, and shall be disregarded in determining the meaning and effect of the provisions of this will.

5.9. Severability Clause. If any provision of this will is invalid, that provision shall be disregarded, and the remainder of this will shall be construed as if the invalid provision had not been included.

5.10. California Law to Apply. All questions concerning the validity and interpretation of this will, including any trusts created by this will, shall be governed by the laws of the State of California in effect at the time this will is executed.

Executed on March 4, 2009, at Gold River, California.

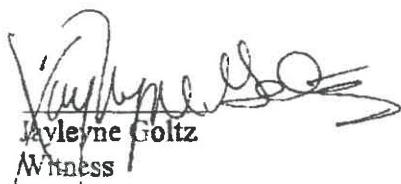


Ardith Louise Ferris

On the date written above, we, the undersigned, each being present at the same time, witnessed the signing of this instrument by Ardith Louise Ferris. At that time, Ardith Louise Ferris appeared to us to be of sound mind and memory and, to the best of our knowledge, was not acting under fraud, duress, menace, or undue influence. Understanding this instrument, which consists of nine (9) pages, including the pages on which the signature of Ardith Louise Ferris and our signatures appear, to be the will of Ardith Louise Ferris, we subscribe our names as witnesses thereto.

We declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 9, 2009, at Gold River, California.



Jaylene Goltz
Witness

6295 Thornicroft Dr.
Valley Springs, CA 95252
T. 209-607-7251

Executed on March 9, 2009, at Gold River, California.



Steve K. Zinnel
Witness

11966 Old Eureka Way
Gold River, CA 95670
T. 916-402-2640

EXHIBIT C

Ardith Ferris

From: Steve Zinnel [stevezinnel@gmail.com]
Sent: Monday, November 30, 2009 8:01 PM
To: a.ferris@comcast.net
Subject: Ameritrade Info

11/30/09

Mom,

Below is your TD Ameritrade IRA account number along with the address.

Love Steve

Ardith Ferris IRA

Account number 782830613

Web site : www.tdameritrade.com

User name: CASTANA1

Pswd: Iowa1156

TD AMERITRADE
PO Box 2760
Omaha, NE 68103-2760

549988

Pin

(: '6
10% (?))

med

Dec 9

Any
Want

Dep/Withdraw

10th & 11th \$ 24⁴⁰
1971222 9/6 635 98⁷⁰

Bank Setup
Verify



TD AMERITRADE CLEARING INC
PO BOX 2209
OMAHA, NE 68103-2209

ARDITH L FERRIS ROLLOVER IRA
TD AMERITRADE CLEARING INC CUSTODIAN
2428 GLENFAIRE DR
RANCHO CORDOVA, CA 95670-3948

2016 Form 1099-R		Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.	OMB No. 1545-0119
Copy C: For Recipient's Records This information is being furnished to the Internal Revenue Service.		Date: 01/23/2017 Document ID: HWNA B44 FM1D Account number: 782830613	
RECIPIENT'S identification number: Recipient: ARDITH L FERRIS ROLLOVER IRA TD AMERITRADE CLEARING INC CUSTODIAN 2428 GLENFAIRE DR RANCHO CORDOVA, CA 95670-3948		PAYER's federal identification number: 47-0533629 Customer Service: 800-888-3900 Payer: TD AMERITRADE CLEARING INC PO BOX 2209 OMAHA, NE 68103-2209.	
FATCA filing requirement			
1 Gross distribution \$6,000.00 2a Taxable amount \$6,000.00 2b Taxable amount not determined (X) Total distribution 3 Capital gain (included on line 2a) 4 Federal income tax withheld 5 Employee contributions/Designated Roth contributions or insurance premiums 6 Net unrealized appreciation - employer's securities 7 Distribution code(s) 7 IRA/SEP/SIMPLE (X)			
8 Other amount Other amount percentage % 9a Your percentage of total distribution % 9b Total employee contributions 10 Amount allocable to IRR within 5 years 11 1st year of design. Roth contrib. 12 State tax withheld 13 State Payer's state number 14 State distribution 15 Local tax withheld 16 Name of locality 17 Local distribution			

1 IN THE UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF CALIFORNIA

3 UNITED STATES,
4 Plaintiff,
5 vs.
6 ZINNELL,
7 Defendants.

Sacramento, California
No. 2:21-mc-00098-TLN-AC
Friday, June 3, 2022
12:50 p.m.

8
9 TRANSCRIPT OF PROCEEDINGS
10 SETTLEMENT CONFERENCE
BEFORE THE HONORABLE KENDALL J. NEWMAN, CHIEF MAGISTRATE JUDGE
(Proceedings held via videoconference.)

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12 APPEARANCES:

13 For the Government:

UNITED STATES ATTORNEY'S
OFFICE
501 I Street, Suite 10-100
Sacramento, CA 95814
By: LYNN TRINKA ERNCE
Assistant U.S. Attorney

17 For the Defendants:

STEVEN ZINNELL, PRO SE
420 S. Center Street
Orange, CA 92866

19 (Appearances continued on following page)

20 Official Court Reporter:

Thresha Spencer,
CSR, RPR
501 I Street
Sacramento, CA 95814

24 Proceedings recorded by mechanical stenography, transcript
25 produced by computer-aided transcription

1 APPEARANCES CONTINUED

2 For David Zinnel:

K. GREG PETERSON
455 Capitol Mall, Suite 325
Sacramento, CA 95814
By: KENNETH GREGORY PETERSON
Attorney at Law

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1 SACRAMENTO, CALIFORNIA, Friday, June 3, 2022, 12:50 p.m.

2 --oo--

3 (Proceedings were held via the Zoom application.)

4 THE CLERK: Please come to order, this court is now
5 in session. The United States Chief Magistrate Judge Kendall
6 J. Newman presiding.

7 Calling miscellaneous case number 21-mc-0098; United States
8 versus Zinnel. This matter is on for settlement conference,
9 your Honor.

10 THE COURT: And good afternoon. I am Judge Newman.
11 The parties have reached an agreement -- not a complete
12 resolution of this case -- but an agreement on a path forward,
13 and we're here to put the terms of that path forward on the
14 record; make sure everyone understands and agrees.

15 So if I could get appearances for the record, starting with
16 government's counsel.

17 MS. ERNCE: Good afternoon, your Honor. Assistant
18 United States Attorney Lynn Ernce for the United States.

19 THE COURT: Okay, good afternoon.

20 And defendant?

21 MR. STEVE ZINNEL: Good morning, your Honor, and the
22 parties. Steve Zinnel, defendant and alleged judgment creditor
23 in this action.

24 THE COURT: Mr. Zinnel, good afternoon. I'm going to
25 say Steven Zinnel, though. Again, I don't confuse people here.

1 MR. STEVE ZINNEL: That would be fine, your Honor.

2 THE COURT: And a third party here, if I could get
3 appearances, please.

4 MR. PETERSON: Greg Peterson for David Zinnel, who is
5 with me. And he is both the successor and trustee of the
6 Castana Trust and a third party, beneficiary.

7 THE COURT: And again, Mr. Peterson, good afternoon
8 to you.

9 David Zinnel, good afternoon to you.

10 So what I'm going to do is I'm going to take a crack at
11 stating the material terms; what I understand everyone has
12 agreed to today.

13 I will ask each of you to please correct any misstatements
14 I make or omissions I make about the material terms. And then
15 once we have all those laid out, I'm going to ask everyone if
16 they understand and agree to those terms.

17 I do want to make clear that while none of us are in the
18 courthouse right now, for all practical purposes, it's as if we
19 were in the courthouse. I am wearing my robe, we have a court
20 reporter, we are now on the record.

21 So in this case Mr. Zinnel -- I'm sorry -- Steven Zinnel
22 continues to take the position -- and it's been David's
23 position -- that it was their mother's desire to leave all of
24 her assets equally to her two boys and through a trust, but
25 there is a recognition that that may not have been fully

1 accomplished when setting up the Ameritrade account.

2 But recognition that that is really an issue between Steven
3 and the government as a result of his criminal conviction and
4 the amounts that the government asserts he owes for
5 restitution, fine, and litigation surcharge.

6 So David Zinnel agrees to dismiss any third party claims he
7 has in this case and withdraw any claims asserting undue
8 influence, fraud, anything else -- or any claims essentially as
9 to the amount the government is seeking from Steve Zinnel out
10 of the Ameritrade account and saying "That is between
11 Mr. Zinnel and the government."

12 Steve Zinnel agrees that any amount that goes to satisfy
13 the government is his responsibility and not David's, so Steve
14 Zinnel doesn't agree he owes the government any additional
15 money, he believes that that may have already been satisfied.

16 Or if there is any money owed, it may be for a fine but not
17 for any restitution. But that is for him to litigate with the
18 government.

19 And he agrees that any amount necessary to satisfy the
20 government is solely his obligation and not an obligation of
21 the trust or to be partially shared by David.

22 And one of the most simple math examples I gave is if there
23 were a million dollars of trust assets -- apart from the
24 Ameritrade account -- and a million dollars in the Ameritrade
25 account and the government was entitled to the entire million

1 dollars in the Ameritrade account, the entire million dollars
2 remaining in the trust account would go to David because there
3 was a total of \$2 million in assets, Steven's one half million
4 dollars went fully to the government and David would be
5 entitled to everything that remains. So that will be between
6 Steven and the government moving forward.

7 There was -- there is -- the government asserts a maximum
8 exposure from the Ameritrade account of \$513,056 in
9 restitution, \$500,000 in fine.

10 The government was seeking a litigation surcharge of
11 \$301,429, but as part of the agreement here today and the
12 resolution, the government agrees the maximum exposure for
13 Steven Zinnel on that Ameritrade account, they're reducing
14 their litigation surcharge to \$150,000.

15 So the total exposure is \$1,163,056. Again, no agreement
16 by Steve Zinnel that the government is entitled to that amount,
17 and the government agrees that would be the maximum they're
18 seeking from the Ameritrade account.

19 And the parties then agree that whatever remains from the
20 Ameritrade account, whether it's all of that, whether it's the
21 government gets part of it or all of it, whatever remains is
22 then an asset of the Castana Trust.

23 And the parties will agree on the record today that any
24 remaining amounts as well as if there's any documentation that
25 needs to be done. And, you know, the government agrees that

1 they really don't have a dog in that fight once their issue
2 with Steve Zinnel has been resolved, but the parties agreed
3 that this transcript could be sent to Ameritrade.

4 And if there's any documentation that needs to be done,
5 that no one will be seeking any assets from the Ameritrade
6 account, Ameritrade is not to distribute any assets until it
7 gets an order from the federal court as to what, if anything,
8 the federal government is entitled to.

9 From that, Ameritrade can satisfy that federal court
10 judgment. And the balance then gets sent to the Castana Trust.
11 And, in fact, the Ameritrade account can be converted to a
12 Castana Trust account.

13 The government is not at this point dismissing its action
14 against the Castana Trust. There is an action in federal
15 court, 21-mc-143, but the government agrees to stay any
16 proceedings in that action until this case involving the
17 Ameritrade account has been resolved.

18 And if that fully satisfies the government's judgment
19 against Mr. Zinnel, they will then move to promptly dismiss any
20 claim the government has asserted in the Castana Trust as well
21 as remove any liens against any real property.

22 Someone informed me that the most recent look at the
23 Ameritrade account, it's actually gone up in value, up to about
24 a million 5. At one point it was a million 8, then it went
25 down to a million 4.

1 I do want to mention a worse case situation possibility if
2 it was to go below the \$1,163,000, the government could then
3 assert a claim in the Castana Trust for whatever wasn't
4 satisfied to their action against the Ameritrade account, but
5 everyone is hoping the market doesn't take that bad of a
6 downturn.

7 Additionally, Steven Zinnel agrees that he is entitled to
8 accounting from the Castana Trust, agrees not to file any
9 petitions, he's not seeking to have any distributions from the
10 Castana Trust, any liquidations of any real property or
11 anything else, again, until this entire matter involving the
12 Ameritrade account is resolved.

13 Mr. Steven Zinnel also agrees that the Court and the
14 parties have authority to enter into these agreements and
15 stipulations on the record today, but wants to make clear by
16 doing so he's not waiving any arguments he has, and has
17 inserted the venue over this matter is more appropriately in a
18 different federal court.

19 Let me start -- I'm hoping that's everything, but let me
20 ask each of the parties.

21 Let me start with Ms. Ernce. Did I accurately state the
22 material terms as you understand the material terms?

23 MS. ERNCE: Yes, your Honor. Just a couple of
24 clarifications. I want to confirm and ask that you have David
25 Zinnel confirm on the record that he'll dismiss his entire

1 third party claim and that he'll file a notice of dismissal as
2 soon as possible.

3 THE COURT: Correct.

4 MS. ERNCE: Second, with respect to what happened to
5 any remainder of the account after the United States is fully
6 satisfied, we prefer not to agree it is an asset of the Castana
7 Trust based on what the probate court said. I'd be comfortable
8 saying that the money should be transferred to the probate
9 court to be determined by the probate court as to what happens
10 to that money.

11 THE COURT: Well, and I think I want to make clear
12 that, and that's also why I mentioned that it is the
13 government's position -- it is the government's position that
14 once its action is satisfied with regard to Steven Zinnel, it's
15 up to Steven and David and other courts as to whether or not
16 that is a trust asset, whether or not it has to go to probate.

17 The government is just not taking a position on that. The
18 government is fine, if otherwise agreed, that it is a trust
19 asset.

20 But we're going to get David and Steven to agree today that
21 it is a Castana Trust asset.

22 MS. ERNCE: That's fine. The United States won't
23 agree that it is a trust asset, but that is between the
24 brothers. And agree that we have no claim to it as -- once the
25 United States is paid in full.

1 THE COURT: Correct. And that's what I'm saying.
2 Because at that point the government has no interest in that
3 money whether it is set up as a trust asset or not a trust
4 asset. Correct, Ms. Ernce?

5 MS. ERNCE: Yes, correct.

6 THE COURT: What else, Ms. Ernce?

7 MS. ERNCE: I believe that's it, your Honor.

8 THE COURT: Mr. Peterson, any corrections,
9 misstatements, anything else, sir?

10 MR. PETERSON: Well, the part about the payments from
11 the IRA. Assuming that is done upon resolution of the disputes
12 between the U.S. and Steve Zinnel would apply as a credit
13 against any interest Steve Zinnel has as a beneficiary under
14 the trust, and that he agrees to that.

15 And I'm assuming that the stay in action 143 assumes that
16 the resolution of the government's position against Steve
17 Zinnel is limited to the agreements that we're making as to the
18 amount of the IRA recovery in the existing 1098, and that the
19 number is not going to change because there is a separate
20 action or something like that.

21 In other words, the resolution of the government's claim is
22 limited to what we agreed to today that will come from the IRA,
23 and that needs to be confirmed.

24 THE COURT: Well, I'm --

25 MR. PETERSON: I assume you were going to resolve

1 both cases. Now I'm hearing 143 is going to stay in limbo out
2 there, and I don't want to agree to settle on a specific
3 figure, leave a second action that is sort of open, and then
4 all of a sudden we've got a new conversation going about,
5 "Well, there is more money owed over here in the second case."

6 THE COURT: Well, I guess I was trying to make it
7 clear -- which is I think Ms. Ernce is agreeing -- that if --
8 if the government recovers its \$1,163,056 in this Ameritrade
9 action, that will completely resolve the government's claim.
10 Even if they've asserted larger amounts in the Castana Trust or
11 in 143, they're not going to be pursuing any difference.

12 Ms. Ernce and the government is agreeing that a
13 satisfaction of that \$1,163,056 would fully satisfy the
14 government's claims against Mr. Zinnel as well as any liens
15 they've asserted against the trust or otherwise.

16 Am I correct about that, Ms. Ernce?

17 MS. ERNCE: That is correct. But if the United
18 States doesn't get the full 1.1, then, yes, the United States
19 will pursue the Castana Trust for whatever the shortfall is.

20 MR. PETERSON: And the last part is the -- I think
21 you addressed this in your comments, your Honor, but I'm
22 looking for as soon as the United States has received
23 resolution, has been paid the full amount agreed to, it no
24 longer has an interest in any of the remaining IRA funds, and
25 at that point the remaining parties -- so now there is, the

1 brothers would agree, that's characterized in trust assets, and
2 that the Court will issue an order to TD Ameritrade that the
3 entitlement is such so that the account is held for David
4 Zinnel, that it doesn't go to the Castana Trust as to whatever
5 remaining balance is there.

6 THE COURT: And part of what -- I agree with part of
7 what you said but not the latter part. The Court will be
8 issuing that order if the parties -- but it would include that
9 Steven and David Zinnel, putting on the record today that that
10 is their agreement.

11 And also I'm happy that if the parties, the two brothers,
12 if the stipulation on the record today by them, including
13 ordering a transcript isn't sufficient, if they want to put
14 together a stipulation that says, "Could you please agree to
15 this, Judge, you know, here is the transcript attached so we
16 have something to send to Ameritrade," that's fine, I'm happy
17 to do that.

18 But I'm not going to otherwise be issuing an order saying,
19 "Yes, it becomes an asset of the trust." That's subject to the
20 brother's agreement, and I'm fine with that as long as the two
21 brothers agree to that regard.

22 And I think the government's position, that's between the
23 brothers, Ameritrade, and whether or not a probate court then
24 accepts that.

25 MR. PETERSON: And the money does not come out of the

1 TD Ameritrade account absent a court order.

2 THE COURT: Yeah. Either a court order or an
3 agreement of the trustee if once the two brothers have agreed
4 this is now a trust asset, correct.

5 You know probate or the resolution of the trust account
6 better than I do or Ms. Ernce does, but nothing is coming out
7 of that account until there is a court order in this federal
8 court action as to what proceeds get paid to the government or
9 not.

10 And then the two brothers are agreeing it then becomes a
11 trust asset. And working with Ameritrade you can even rename
12 the account if this transcript of this on the record isn't
13 sufficient with both of them agreeing to that. And then I
14 don't know enough about trust account distributions and
15 payouts, whether that's a court order or an order from David --

16 MR. PETERSON: We're simply talking about this asset,
17 what happens with it when the government satisfies what they
18 are seeking --

19 THE COURT: Correct.

20 MR. PETERSON: -- and then that balance would stay in
21 the account absent a court order or a stipulation that would
22 allow for their moneys to be moved into the Zinnel Trust.

23 But we're going to agree between David and Steven today as
24 part of the settlement that at that point it would be a trust
25 asset.

1 THE COURT: Correct.

2 MR. PETERSON: Okay.

3 THE COURT: And the only reason I -- I don't know if
4 you need a court order, is if Steven and David both sign
5 documents and then say it is a trust, and they both sign
6 something saying it is now paid to put this into the trust.
7 You know better than I do whether you need a court order. At
8 that point --

9 MR. PETERSON: Court order is always the gold
10 standard.

11 THE COURT: Okay. That's fine.

12 MS. ERNCE: Well, I guess my two cents on this is --
13 well, the concerns that any order of this Court providing that
14 that's an asset of the trust would be a determination of --
15 that might be better suited for the probate court.

16 The way I envisioned this is that money would go to the
17 United States, and then the other money would go to the probate
18 court for a determination.

19 And the brothers can assert and take the position in the
20 probate court that that is a trust asset and they can do
21 whatever they want with the document.

22 MR. PETERSON: We're not going to agree to a
23 settlement to reserve that fight for later, and after the
24 United States has been paid, it does not have a dog in this
25 fight at that point.

1 THE COURT: Wait, wait, stop. I want to make clear
2 two things. Number one of which, the government is not
3 agreeing today that the Ameritrade account is a trust asset.
4 It is the government's position that it wasn't set in the
5 trust, and that's not set up that way.

6 Instead, it is my understanding that Steve Zinnel and David
7 Zinnel don't have a disagreement amongst the two of them that
8 it was their mother's desire to have money paid into a trust.
9 There's even a pour-over provision, and that's where assets get
10 distributed from.

11 And so it is -- to be clear, when you talked about a court
12 order and the standard, I don't know whether you're talking
13 about an order from this court, the probate court, what you're
14 talking about.

15 What it's making clear is once the government's claim
16 against Steve Zinnel has been satisfied from the Ameritrade
17 account, they no longer have any claim to the remainder of the
18 money; no dog in that fight.

19 If Steven and David want to say that that's a trust asset,
20 that's between them, as far as the government is concerned. If
21 they want to say it's part of Elvis Presley's estate, the
22 government doesn't care, that's between them.

23 I just want to make clear here that to avoid later
24 disputes, while we're here on the record, Steven and David will
25 both, on the record in front of a federal court, agree that the

1 remainder, once the government has been satisfied, will be a
2 trust asset and will do whatever paperwork is necessary to
3 effectuate that.

4 If it's an order from a probate court, fine. If it is the
5 two of them just signing something with Ameritrade saying,
6 "Please rename this account," but that's between them, the
7 government is not involved in this, this Court is not making a
8 determination whether or not it is a trust asset, just that the
9 brothers are agreeing that that's what it is once the
10 government is satisfied.

11 Does that make it clear? I see a yes from Ms. Ernce.

12 MS. ERNCE: Yes, your Honor.

13 THE COURT: Mr. Peterson?

14 MR. PETERSON: Yes. How about Mr. Zinnel?

15 THE COURT: I'm going to get to him on that, but I
16 just want to make -- Mr. Peterson, one of the things that I
17 misstated or need clarification.

18 Mr. Peterson, anything else?

19 MR. PETERSON: No.

20 THE COURT: Steven Zinnel, anything I've misstated or
21 need clarification before we agree to all of this on the
22 record?

23 MR. STEVEN ZINNEL: Three things, your Honor,
24 quickly. Again, I just want to clarify. I agree -- I'm
25 stipulating that the Court has jurisdiction -- limited

1 jurisdiction to make this settlement, but I strongly dispute
2 that the Eastern District has jurisdiction, and I will continue
3 to litigate that by me consenting today, I am not consenting
4 and waiving my jurisdictional and venue argument.

5 THE COURT: Wait, wait, wait. Let's just stop each
6 one, and I understood. I thought I had stated that, but I
7 agree, Ms. Ernce, do you recognize and agree with that as well?
8 You're not agreeing the venue is somewhere else, but you're
9 agreeing he's not giving up his venue argument by entering into
10 this agreement today?

11 MS. ERNCE: I agree that he's not giving up his venue
12 argument. But, I mean, the Court will have jurisdiction to
13 adjudicate the TD Ameritrade garnishment so we can bring this
14 to a close.

15 THE COURT: Well, that's between -- Mr. Zinnel can
16 continue to make his argument if the Court doesn't have
17 jurisdiction to do that. Yeah, okay.

18 MR. STEVEN ZINNEL: That's correct, your Honor, and I
19 intend to.

20 THE COURT: Go ahead, next.

21 MR. STEVEN ZINNEL: If I win on this, then this is
22 for nothing.

23 THE COURT: No, no, not necessarily. No, and I want
24 to make clear. Because wait, wait, wait. I think it was
25 Orange, if I wasn't mistaken. At some point you said the

1 jurisdiction is more appropriate. Let's assume I'm picking
2 Orange.

3 MR. STEVEN ZINNEL: That's where I am.

4 THE COURT: All right. Well, you're down in Central
5 District. Everything that's been agreed here is still part of
6 the court justice and will go to the Central District and would
7 still be enforceable there just as much as it is here. Even if
8 you say, "Well, the rest of the case should be adjudicated
9 there," everything agreed to here is still enforceable.

10 Do you understand that?

11 MR. STEVEN ZINNEL: I agree, your Honor.

12 THE COURT: Okay. Point number two, Mr. Zinnel.

13 MR. STEVEN ZINNEL: Okay. Not only do I want an
14 accounting from David Zinnel, but I want an accounting from the
15 government.

16 THE COURT: And that's a separate issue that we
17 purposefully haven't gotten into. That is still your right in
18 the action against the government, and I'm sure that is part of
19 agreed bone of contention. To be ultimately decided by Judge
20 Claire is the evidence and issues sufficient, and ultimately
21 Judge Nunley is --

22 MR. STEVEN ZINNEL: I think the goal is --

23 THE COURT: I get that, and you're not giving up -- I
24 understand that. I'm sorry, what?

25 MR. STEVEN ZINNEL: I believe under the law the

1 government owes me an accounting.

2 THE COURT: And that, again, I'm not deciding that
3 legal issue right now.

4 MR. STEVEN ZINNELL: Okay.

5 THE COURT: I'm sorry. I don't agree whether or
6 not you are or are not entitled. I agree that's an issue for
7 another day for you and Ms. Ernce to litigate and decide, let
8 Judge Claire and Judge Nunley decide.

9 MR. STEVEN ZINNELL: Thank you. The third thing I
10 want to clarify is the government's statement that if they get
11 there -- I'm just rounding your number up. What was the final
12 number between 513, 500,000, and 150 on the surcharge?

13 THE COURT: Well, it's \$1,163,056.

14 MR. STEVEN ZINNELL: Okay. The government said that
15 if they get that \$1,163,056, that the 0143 case goes away.
16 That's what I understood that she said, okay?

17 THE COURT: Wait, wait, let me stop. Wait, wait.
18 Stop, stop, stop, stop.

19 Ms. Ernce, is that -- am I correct about that? If you
20 satisfy this total amount through this action, through this
21 Ameritrade money, you'll be dismissing -- the government will
22 be dismissing any claim or dismissing the 21-mc-143?

23 MS. ERNCE: Yes. Because there will be no more fine,
24 restitution, or litigation surcharge owed.

25 THE COURT: Correct.

1 MR. STEVEN ZINNEL: No, thank you, your Honor. So
2 here is the clarification point. Conversely, if I am correct,
3 which I strongly can assert I am. If the government gets zero
4 in this case, they also have to dismiss 143. They don't get a
5 second bite of the apple.

6 THE COURT: And I didn't talk to you about this. I
7 actually talked to Mr. Peterson and your brother about this.
8 It depends on what the circumstances are.

9 And the reason I say that. If, as a matter of law, Judge
10 Claire/Judge Nunley determines that the government is not
11 entitled to any other money, they've been fully satisfied,
12 then, again, as a matter of law, that's called res judicata, I
13 don't think they'd have a leg to stand on in the 143.

14 If for some reason the government -- the Court just says,
15 "Hey, we're not going there. We think this is an asset of the
16 trust." The government should be pursuing any actions it's got
17 against the trust even though they technically didn't get any
18 money from the Ameritrade account, there was also no
19 determination that they weren't entitled to any money, then the
20 143 may still be going forward.

21 Do you see those two distinctions?

22 MR. STEVEN ZINNEL: Your Honor, I agree with that. I
23 agree with that.

24 THE COURT: Well, that's all I wanted to clarify so
25 people didn't have a misunderstanding.

1 What else, Mr. Zinnel?

2 MR. STEVEN ZINNEL: That's it.

3 THE COURT: All right.

4 Let me start with you, Steven.

5 So do you understand everything that's being agreed to here
6 today?

7 MR. STEVEN ZINNEL: I do, your Honor.

8 THE COURT: And do you understand that I am now
9 wearing my robe, there is a court reporter, we are on the
10 record before a federal court so everything that's agreed to
11 here is binding in this action, in any actions going forward,
12 whether that includes trust, accountings, whether that's
13 probate, whether your action gets transferred to the Central
14 District. All of the agreements by the parties here are
15 binding.

16 Do you understand that?

17 MR. STEVEN ZINNEL: I do, your Honor.

18 THE COURT: And are you currently taking any drugs or
19 medication, whether over-the-counter, illegal, prescription, or
20 otherwise, that affect your ability to think clearly or
21 understand what's happening here today?

22 MR. STEVEN ZINNEL: I am not, your Honor.

23 THE COURT: Any reason why the parties shouldn't go
24 forward with these agreements here today?

25 MR. STEVEN ZINNEL: Not that I'm aware of, your

1 Honor.

2 THE COURT: And you understand that the terms laid
3 out in this agreement -- and the parties can get a
4 transcript -- will be binding, but if there are documents
5 necessary to effectuate this?

6 For example, if down the road there is a document necessary
7 to make sure that the Ameritrade -- the remainder of the
8 Ameritrade account becomes an asset of the trust, you'll agree
9 to sign whatever is necessary to effectuate that, it is not a
10 basis to refuse to sign that or to later try and set aside and
11 agree to here today, or because you've had second thoughts or
12 you thought, "No, I should have never agreed to all of this."
13 No, we'll have an agreement as of today.

14 Do you understand all of that?

15 MR. STEVEN ZINNEL: I do, your Honor.

16 THE COURT: And with all that said, do you agree with
17 everything that we have laid out on the record here today?

18 MR. STEVEN ZINNEL: Yes, your Honor.

19 THE COURT: Mr. Peterson, do you understand the
20 material terms of the settlement?

21 MR. PETERSON: I believe so, your Honor.

22 THE COURT: And you understand, sir, and I want to
23 make clear today --

24 MR. PETERSON: Hold on, your Honor. May I?

25 THE COURT: Sure. And you can mute if you want to

1 talk to him for a moment.

2 MR. DAVID ZINNELL: Your Honor, I need to clarify.

3 THE COURT: No, no. But I think it is a point worth
4 making. And I know it is the government's position, it is not
5 a trust asset. And it may have been the parties' desire, but
6 it is the government's position as a matter of law, it wasn't
7 set up that way.

8 But am I correct between you and your brother and the
9 trust, that you would agree that this ultimately becomes a
10 trust asset, even if you're successful at prevailing against
11 the government?

12 MR. DAVID ZINNELL: Yes, your Honor.

13 THE COURT: Okay. Very good.

14 All right. Mr. Peterson, do you understand all of the
15 material terms that have been laid out on the record?

16 MR. PETERSON: Yes, your Honor.

17 THE COURT: And you understand that there are --
18 each side, between you and Steve Zinnel and the government,
19 each side is responsible for its own attorney's fees and costs?

20 MR. PETERSON: Oh, yes.

21 THE COURT: And to the extent that you would have
22 your claim -- your own claim for attorney's fees and costs, and
23 to the extent that David Zinnel and the trust have sought your
24 advice and recommendation, do you both agree to and recommend
25 the terms of the settlement?

1 MR. PETERSON: Yes.

2 THE COURT: All right. David Zinnel, do you
3 understand the material terms of the settlement?

4 MR. DAVID ZINNEL: Yes.

5 THE COURT: And both as an individual and as a
6 successor trustee for the Castana Trust, have you had enough
7 time to talk to Mr. Peterson about what is being agreed to here
8 today?

9 MR. DAVID ZINNEL: Yes. I just do have one more
10 question. Can we mute real quick?

11 MR. PETERSON: Sure. Can you excuse us for just one
12 minute?

13 THE COURT: Go ahead and mute. Go ahead.

14 (Break.)

15 MR. PETERSON: Your Honor, I'm back. That
16 clarification with regard to the attorney's fees, each party is
17 bearing their own fees in connection with the federal court
18 action, but that does not have anything to do with how they're
19 characterized in the probate court proceeding.

20 THE COURT: Correct. And the government takes no
21 position at this point whether or not that is an appropriate
22 charge for David Zinnel individually versus --

23 MR. PETERSON: Right.

24 THE COURT: -- a charge against --

25 MS. ERNCE: Agreed, your Honor.

1 THE COURT: David Zinnel, are you currently taking
2 any drugs, medications, over-the-counter, illegal, otherwise,
3 that affect your ability to think clearly or understand what's
4 happening here today?

5 MR. DAVID ZINNEL: No.

6 THE COURT: Any reason we shouldn't go forward with
7 agreeing to all of these terms on the record here today?

8 MR. DAVID ZINNEL: No.

9 THE COURT: And with all of that said, do you agree
10 to all of these terms?

11 MR. DAVID ZINNEL: Yes.

12 THE COURT: Ms. Ernce, do you understand the material
13 terms of the settlement?

14 MS. ERNCE: Yes, your Honor.

15 THE COURT: To the extent your office would have its
16 own claims for attorney's fees and costs and to the extent you
17 can bind the government to the terms, do you agree to the terms
18 in this case?

19 MS. ERNCE: Yes, your Honor.

20 THE COURT: Very good. All right. Folks, we have an
21 agreement. I think that helps with a path forward. You can
22 contact my courtroom deputy in terms of ordering a transcript
23 of today's proceedings.

24 You can also let me know if there is any documentation that
25 otherwise needs to be done.

1 Mr. Peterson, am I correct you are going to promptly file
2 whatever is necessary to dismiss any claims that your client is
3 asserting in the 21-mc-098-TLN-AC, as well as to make clear
4 that between Steve Zinnel and the government, your client is
5 not asserting any claims to any of those proceeds, correct?

6 MR. PETERSON: Yes.

7 THE COURT: Okay. And when do you envision being
8 able to file the necessary documentation?

9 MR. PETERSON: Monday.

10 THE COURT: Okay, excellent. I don't know -- one
11 thing I wanted to make clear while we're still on the record,
12 and this is important for Steven Zinnel to understand as well
13 and Ms. Ernce. Which is, Mr. Peterson, if you want to send any
14 documents to Steven Zinnel to have him sign for Ameritrade
15 purposes, clarifying that once the government's action is
16 resolved between the government and Steven Zinnel, that the
17 account would then be converted to a Castana Trust account, you
18 are welcome to do so.

19 But I also want to make clear for Steven Zinnel, that was
20 in furtherance of a settlement and as part of these terms that
21 have been laid out today. And even if there is such a signed
22 document between you and your brother, it's not something that
23 can be introduced in the action against the government that
24 says, "Oh, see, see, this account is really intended to be a
25 Castana Trust, and we've now signed documents converting it to

1 a trust."

2 Again, that conversion is only effective once your action
3 is resolved between the government.

4 Steven Zinnel, do you understand that, sir?

5 MR. STEVEN ZINNEL: I do, your Honor.

6 THE COURT: Okay. And that's the only reason. If
7 you want to send him documents now, you can't submit those to
8 Ameritrade at this point. But then you've got them signed and
9 dated and stuff once the actions resolve between Ms. Ernce and
10 Steven Zinnel.

11 MR. PETERSON: And is the 143 action stayed for all
12 purposes? And I assume that means no discovery or anything
13 that my client --

14 THE COURT: Correct. And I will have a -- my
15 courtroom deputy issue a minute order that's saying that the
16 parties agreed to a number of material terms in this case,
17 21-mc-098-TLN-AC, which help set forth a path forward between
18 government and defendant Steven Zinnel.

19 As part of that third party, claimant will promptly file a
20 dismissal of any claim or assertion to entitlement to those
21 proceeds in that case. And the case of 21-mc-143 is hereby
22 stayed and all dates vacated until a resolution of case
23 21-mc-098.

24 Does that sound appropriate?

25 MS. ERNCE: Your Honor, can I just say one thing?

1 THE COURT: Certainly.

2 MS. ERNCE: I don't envision that there's any
3 discovery that's going to be necessary to resolve the TD
4 Ameritrade account, but I don't want to be excluded from
5 seeking discovery from Mr. Zinnel -- David Zinnel in that case
6 if for some reason it is.

7 Just because the Castana Trust case is stayed, it doesn't
8 mean that the United States can't seek any appropriate
9 discovery in the TD Ameritrade case.

10 THE COURT: Nothing is stayed in the Ameritrade case.
11 And, yes, so there still could be discovery in that.

12 MS. ERNCE: Uh-huh.

13 THE COURT: I'd ask to have the parties cooperate.
14 "Oh, David is a third party" -- I mean -- "yes, an uninvolved
15 third party, you're not entitled to discovery."

16 No, I assume you all will cooperate, and if you need me to
17 get involved, let me know that.

18 MS. ERNCE: Thank you, your Honor.

19 THE COURT: Mr. Peterson, that's all agreeable?

20 MR. PETERSON: The concept of more discovery isn't,
21 but I understand the reason.

22 THE COURT: Right.

23 MR. PETERSON: We'll see what shakes out.

24 THE COURT: Okay. Any other documentation,
25 Ms. Ernce, that you can think of necessary to effectuate all of

1 these terms?

2 MS. ERNCE: No, your Honor, not at the moment. We'll
3 be proceeding to seek our final order of garnishment, and that
4 will tee everything up.

5 THE COURT: Mr. Peterson, any other documentation you
6 can think is necessary at this point?

7 MR. PETERSON: No.

8 THE COURT: Mr. Steven Zinnel, anything else you can
9 think of at this point? I know you want an accounting, but,
10 again, that's for you to file in the 21 -- and I think you
11 already had certain of those accounts. 21-mc-098, if and when
12 Ms. Ernce files for order to final. That would be nice, I
13 think you're welcome to file something saying final
14 garnishment. That's when you can then say, "Oh, you can't do
15 that until I get a final accounting."

16 Again, that's between you, Judge Claire, and Judge Nunley.

17 But anything else --

18 MR. STEVEN ZINNEL: Yes.

19 THE COURT: -- to further these terms, sir?

20 MR. STEVEN ZINNEL: Nothing to further these terms.
21 But one thing since everybody is here. I have the means to
22 file electronically now. I have the means and ability to
23 receive service. There has been a huge problem of me timely
24 receiving service in both the 098 case and the 143 case.

25 Local Rule 133(b) allows me to have the Court allow me to

1 use the CM/ECF system. It refers to that the parties are
2 supposed to stipulate, and I intend to file the motion, but I'm
3 asking that the parties stipulate to let me electronically file
4 and receive notice by electronic file both in the 098 case and
5 in the 143 case.

6 I have gotten documents way after orders are issued, and
7 neither Mr. Peterson nor the government counsel can claim any
8 prejudice because they get electronic -- every time my stuff is
9 scanned, they get it electronically anyway. So I'm asking the
10 Court --

11 THE COURT: Here's my suggestion going forward for
12 that, which is the one thing you just touched on, which is what
13 you should promptly do is file a request in the action or
14 actions asking for authority to do electronic filing and citing
15 the local order.

16 At which point, again, I doubt that Mr. Peterson files
17 something -- he probably doesn't have much of a dog in that
18 fight.

19 Ms. Ernce can file either a statement of non-opposition or
20 why she thinks it's not appropriate. Typically, it's left to
21 the judge, and what I don't know, and I haven't looked at
22 enough of this is, as a judge who often decides these issues,
23 what I look at is what a person has filed previously.

24 And I will pick just one example of something that could
25 hurt you in that request. The settlement statement I got from

1 you, and this is in plaintiff's side of the settlement, but the
2 settlement statement I got from you when a whole bunch of
3 issues when we went to settlement, and it started off with a --
4 "Have the government leave us the F alone."

5 It's the kind of thing that causes the judge to go, "Nah,
6 I'm not going to give this authorization to file things."

7 It's when you have shown the Court, "Hey, I get it. I'm
8 filing only what's necessary. I'm not inundating you with
9 stuff." But so that's why -- I'm not putting someone on the
10 spot at this point. I think you file your request, and then
11 Ms. Ernce and/or Mr. Peterson can submit.

12 MR. PETERSON: Hopefully, file something so you can
13 say, "Hey, no opposition, or here is why it has been abused,"
14 yeah.

15 MR. STEVEN ZINNEL: So two things, and I'll say this
16 and we can move on.

17 THE COURT: Sure.

18 MR. STEVEN ZINNEL: Number one, no matter what I put
19 in paper filings, that gets filed. So your first concern is I
20 don't quite understand, and the court clerk has to file
21 whatever I submit in paper form. And then the rule says --

22 THE COURT: Wait, I'll answer that for you. Because
23 we have found it's a reason pro ses were not included in this.
24 We found that the easier it is for somebody -- and they don't
25 even have to print or mail things -- the more they sometimes

1 abuse the system. That's why.

2 MR. STEVEN ZINNEL: Okay. Well, between the criminal
3 case 098 and 143, it is obvious I have the ability to file
4 paper, okay? And now I have a word processor and unlimited
5 printing so I can really file paper.

6 THE COURT: And, Mr. Zinnel, you and I have gotten --
7 go ahead.

8 MR. STEVEN ZINNEL: Let me say one last thing, your
9 Honor --

10 THE COURT: Sure.

11 MR. STEVEN ZINNEL: -- while you're here just because
12 I'm letting them know what's coming.

13 The Local Rule says you cannot submit that request to the
14 Court first, you have to seek a stipulation and order from the
15 parties first, okay?

16 So I've already drafted that, and I'm going to send it to
17 counsel. But if we can stipulate now, then it eliminates that
18 step.

19 But I am going to do -- I'm going to follow the Local Rule
20 133(b) that states that before you file the request with the
21 Court, you have to seek a stipulation of the parties. And I
22 can see no way that the parties are prejudiced. They'd
23 probably throw away my paper. The court clerk rules say that
24 once they scan my papers, they throw them away. It is a
25 complete waste of trees. But, believe me, postage will not

1 stop me from filing this, so...

2 THE COURT: Thresha, we can go off the record. You
3 don't have to take all this down.

4 (Proceedings adjourned: 1:35 p.m.)

5 ---o0o---

6 I certify that the foregoing is a correct transcript from the
7 record of proceedings in the above-entitled matter.

8

9 /s/ Thresha Spencer
10 THRESHA SPENCER
11 CSR No. 11788, RPR

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 STEVEN ZINNEL,
15 Debtor.

Case No. 2:21-mc-00098-TLN-AC

ORDER ADOPTING FINDINGS AND RECOMMENDATIONS FOR FINAL ORDER OF GARNISHMENT

Criminal Case No. 2:11-cr-00234-TLN

TD AMERITRADE CLEARING, INC.,
(and its Successors and Assignees)

Garnishee.

Defendant-debtor Steven Zinnel (“Defendant”) proceeds in this action pro se. The matter was referred to a United States Magistrate Judge pursuant to Local Rule 302(c)(21).

On June 13, 2022, the magistrate judge filed findings and recommendations for a final order of garnishment herein which were served on the parties and which contained notice to the parties that any objections to the findings and recommendations were to be filed within fourteen days. (ECF No. 137.) Defendant filed objections to the findings and recommendations on June 30, 2022. (ECF No. 138.) On July 11, 2022, the United States filed a response to Defendant's objections. (ECF No. 147.)

111

1 The Court has reviewed the file and concludes that the findings and recommendations are
2 supported by the record and by the magistrate judge's analysis.

3 Accordingly, IT IS HEREBY ORDERED THAT:

4 1. Defendant's objections (ECF No. 138) are OVERRULED and the Findings and
5 Recommendations for Final Order of Garnishment (ECF No. 137) are ADOPTED IN FULL;
6
7 2. TD Ameritrade Clearing, Inc. ("Garnishee") shall pay the Clerk of the United States
District Court \$1,012,047.08 of the funds held by Garnishee within fifteen (15) days of the filing of this
8 Order. Payment shall be made in the form of a cashier's check, money order, or company draft, made
9 payable to the "Clerk of the Court", and delivered to:

10 Office of the Clerk
11 501 I St., Rm. 4-200
 Sacramento, CA 95814

12 The criminal docket number (2:11-cr-00234-TLN) shall be stated on the payment instrument;

13 3. The United States shall recover a \$150,000.00 litigation surcharge pursuant to 28 U.S.C.
14 § 3011(a) and the United States' agreement to reduce its litigation surcharge to \$150,000;

15 4. Garnishee shall pay \$150,000.00 to the United States Department of Justice via a single
16 payment within fifteen (15) days of the filing of this Order and send the payment in the form of a
17 cashier's check, money order, or company draft made payable to "United States Department of Justice"
18 and delivered to:

19 U.S. Department of Justice
20 Nationwide Central Intake Facility
 P.O. Box 790363
 St. Louis, MO 63179-0363

22 "CDCS Number 2015A03982" shall be stated on the face of the payment instrument;

23 5. Garnishee shall hold any remaining funds after full payment of \$1,162,047.08 has been
made to the Clerk and the United States as set forth in paragraphs 2-4 above, pending further order of
25 the Court;

26 6. The Court shall retain jurisdiction to resolve matters through ancillary proceedings in the
27 case, if necessary; and

28 ///

7. The garnishment shall terminate when Garnishee has paid the \$1,162,047.08 as directed in paragraphs 2-4 above.

IT IS SO ORDERED.

DATED: July 15, 2022


Troy L. Nunley

Troy L. Nunley
United States District Judge

1 K. Greg Peterson, Esq. (SBN: 118287)
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Telephone: (916) 443-3010
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6 Attorney for DAVID ZINNELL, Successor Trustee of
The Castana Trust, Dated March 4, 2009

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

22 DAVID ZINNEL, SUCCESSOR TRUSTEE OF THE CASTANA TRUST, DATED
23 MARCH 4, 2009 ("David Zinnel") submits the following Memorandum of Points and
24 Authorities in support of his Motion to Enforce Settlement Agreement and for Monetary
25 Sanctions.

BACKGROUND FACTS

27 1. This action involves an Application for Writ of Garnishment filed on April 2,
28 2021, by Plaintiff UNITED STATES OF AMERICA ("USA") in connection with criminal

1 monetary penalties totaling \$3,014,294 assessed against Debtor STEVEN ZINNEL
2 ("Steven Zinnel") in criminal case number 2:11-CR-00234-TLN.

3 2. The Garnishee, TD AMERITRADE CLEARING, INC. ("TD Ameritrade"),
4 responded in this action by disclosing its possession of Rollover IRA Accounts 787–
5 727536 and 72–830613 (together, the "TD Ameritrade IRA") in which it claims Steven
6 Zinnel has an interest.

7 3. David Zinnel who was served with a copy of the USA's Application for Writ
8 of Garnishment responded in his capacity as Successor Trustee of The Castana Trust,
9 Dated March 4, 2009 (the "Castana Trust") and in his capacity as a 50% beneficiary of
10 the Castana Trust by claiming an interest in the entirety of the TD Ameritrade IRA as an
11 asset of the Castana Trust.

12 4. On June 3, 2022, Steven Zinnel and David Zinnel entered into a settlement
13 agreement with Plaintiff USA that was placed on the record before Chief Magistrate
14 Judge Kendall J. Newman. As a material part of that settlement agreement Steven
15 Zinnel and David Zinnel have agreed as follows:

16 a. David Zinnel agreed to dismiss his third-party claims and withdraw
17 any claims of fraud or undue influence in the USA's Application for Writ of Garnishment
18 proceedings, in exchange for the following:

19 i. Assuming it prevails in this garnishment action, the USA
20 agreed to limit the total amount of its criminal monetary penalties owed by Steven Zinnel
21 to \$1,013,056.06 (\$513,056.06 restitution. \$500,000.00 penalty) and its litigation
22 surcharge to \$150,000.00, for a total amount of \$1,163,056.06 (the "Agreed Amount")
23 which the USA shall seek to recover from the TD Ameritrade IRA account [Transcript
24 6:15]¹.

25
26
27 ¹ All references to Transcript are to the Transcript of Proceedings of the Settlement
28 Conference held on June 3, 2022, before the Hon. Kendall J Newman, Chief Magistrate
Judge in this matter and as transcribed Thresha Spencer, CSR (ECF 134). A true and

1 ii. Assuming the USA is able to recover the Agreed Amount
2 from the TD Ameritrade IRA, David Zinnel is then entitled to everything that remains in
3 the TD Ameritrade IRA [Transcript 5:22-6:5] as an asset of the Castana Trust
4 [Transcript 6:19-22, 9:20-21], and any balance remaining is to be sent to the Castana
5 Trust [Transcript 7:10] or the account may be converted to a Castana Trust account
6 [Transcript 7:11-12]. Steven Zinnel and David Zinnel agreed that any remaining balance
7 of the TD Ameritrade IRA will be a Castana Trust asset and that they will agree to
8 execute whatever paperwork is necessary to effectuate their agreement.

9 iii. Steven Zinnel agreed that any and all amounts paid from the
10 TD Ameritrade IRA which are paid to the USA in satisfaction of the Agreed Amount
11 pursuant to the terms of the settlement in this matter are Steven Zinnel's sole
12 responsibility and not David Zinnel's [Transcript 5:12-13, 5:19-21].

13 iv. After payment of any amounts from the TD Ameritrade IRA to
14 the USA pursuant to the terms of the settlement, all such amounts paid to the USA are
15 to apply as a credit against any interest Steven Zinnel has as a beneficiary under the
16 Castana Trust [Transcript 10:10-14].

17 5. Steven Zinnel agreed to all matters stated on the record in the transcript of
18 settlement proceedings [Transcript 21:3-17, 22:16-18], including the execution of any
19 documents to assure any remaining balance of the TD Ameritrade IRA account is
20 transferred to and becomes an asset of the Castana Trust [Transcript 22:6-15].

21 6. David Zinnel agreed to all terms stated on the record [Transcript 25:9-11].

22 7. The USA agreed to all terms stated on the record [Transcript 25:15-19].

23 8. TD Ameritrade is not to distribute any proceeds from the TD Ameritrade
24 IRA until it gets an order from the federal court as to what the federal government is
25 entitled to collect under the terms of the settlement [Transcript 7:6-8] and following the

27 correct copy of the Transcript is attached as **Exhibit A** to the Declaration of K. Greg
28 Peterson, Esq. ("Peterson Declaration"), served and filed concurrently herewith.

1 satisfaction of payment to the USA of the Agreed Amount from the TD Ameritrade IRA,
2 any remaining funds shall not be distributed by TD Ameritrade absent a court order or
3 further agreement of Steven Zinnel and David Zinnel [Transcript 12:25-13:4, 13:6-13,
4 13:20-14:1].

5 9. The USA agreed to a stay of the related action (2021-mc-00143) involving
6 garnishment of Steven's interest in any assets of the Castana Trust [Transcript 7:14-17]
7 and pending the determination of the USA's entitlement to fully satisfy the Agreed
8 Amount from the TD Ameritrade IRA. The stay of the Related Action is for all purposes
9 including discovery, with all dates vacated [Transcript 27:11-23]. If the USA is able to
10 fully satisfy the Agreed Amount from the TD Ameritrade IRA account, the USA has
11 agreed this will fully resolve all of its claims against Steven, to dismiss the Castana Trust
12 action (2021-mc-00143) and to remove any and all liens from any Castana Trust real
13 property [Transcript 7:18-21, 11:6-17, 19:14-25].

14 10. Notwithstanding his right to an accounting, and pending the resolution of
15 matters involving the USA's garnishment of the TD Ameritrade IRA, Steven Zinnel
16 agreed he will not file any petitions in the Probate Court seeking, among other things,
17 any distributions from the Castana Trust or liquidations of real or personal property
18 [Transcript 8:7-12].

19 11. On June 6, 2022, and in reliance on the above-referenced agreements,
20 David Zinnel dismissed his third-party claims in this action.

21 12. On June 22, 2022, counsel for David Zinnel sent Steven Zinnel via email a
22 draft Stipulation and Order regarding the disposition of the TD Ameritrade IRA Account.
23 (Peterson Declaration, Exhibits B and C). Steven Zinnel has indicated he refuses to sign
24 the Stipulation.

25 13. On June 30, 2022, Steven Zinnel filed Objections to Magistrate Judge's
26 Findings and Recommendations (ECF 138) that included language indicating the "never
27 agreed to a stipulation of any remaining funds after full payment of \$1,163,056.06 has
28

1 been made to the United States." (Objection 17:11-12). David Zinnel considers this a
2 complete rejection of his settlement with Steven Zinnel.

3 POINTS AND AUTHORITIES

4 14. Where an action remains pending and the federal court retains jurisdiction,
5 either party may move for an order to enforce a settlement agreement. *Golden v.*
6 *California Emergency Physicians Medical Group* (9th Cir 2015) 782 F 3rd 1083, 1088.

7 15. There is no need for an evidentiary hearing where the parties have made
8 an oral settlement on the record in open court. The court may require the parties to
9 comply with their representations without holding a hearing. *Doi v. Halekulani Corp.* (9th
10 Cir 2002) 276 F.3d 1131, 1138. Here, a settlement between David Zinnel and Steven
11 Zinnel was clearly entered into on June 3, 2022, and placed on the record before Judge
12 Newman.

13 16. Finally, a party may, on a noticed motion, be sanctioned for refusing to
14 sign a written settlement that embodies terms orally agreed to before the court: "An
15 agreement announced on the record becomes binding even if a party has a change of
16 heart after [he or she] agreed to its terms but before the terms are reduced to writing."
17 *Doi v. Halekulani, supra.* Here, Steven Zinnel has refused to sign a stipulation pertaining
18 to the Parties' agreement pertaining to the disposition of the TD Ameritrade IRA account,
19 and monetary sanctions against Steven Zinnel are therefore warranted. As set forth in
20 the Declaration of K Greg Peterson Esq., monetary sanctions in the amount of \$1,600
21 represent the reasonable attorney's fees incurred in connection with the present motion
22 and are therefore appropriate.

23 CONCLUSION

24 WHEREFORE DAVID ZINNEL, Successor Trustee of the Castana Trust, dated
25 March 4, 2009, prays for an order or orders from this Court as follows:

26 1. That this Court sign the attached Stipulation on behalf of Defendant and
27 Judgment Debtor, STEVEN ZINNEL to the settlement made in this matter on June 3,
28 2022, in open court before Chief Magistrate Judge Kendall J. Newman.

1 2. That monetary sanctions in the amount of \$1,600 and representing the
2 reasonable attorneys' fees of the other settling party, David Zinnel, are herewith
3 imposed against Steven Zinnel for his refusal to sign the Stipulation notwithstanding his
4 agreement as part of the above-referenced settlement to sign any documentation related
5 thereto.

6 3. Assuming the USA prevails in its garnishment action against Steven
7 Zinnel, and only after the USA has so prevailed, any and all amounts paid in satisfaction
8 of the USA's restitution judgment against Steven Zinnel, including criminal monetary
9 penalties and litigation expenses which shall not exceed \$1,013,056.06, are Steven
10 Zinnel's sole personal responsibility and come from his personal interest in the TD
11 Ameritrade IRA;

12 4. Any and all amounts remaining in the TD Ameritrade IRA after the USA
13 has recovered in this garnishment action against Steven Zinnel's personal interest shall
14 become the property of David Zinnel in his capacity as trustee of the Castana Trust, and
15 TD Ameritrade shall either convert the remaining balance in the existing TD Ameritrade
16 IRA to an account held by David Zinnel in said capacity or TD Ameritrade shall transfer
17 the balance of the account to another financial institution in care of "David Zinnel,
18 Successor Trustee of the Castana Trust" and pursuant to written instructions provided
19 by David Zinnel;

20 5. Any and all amounts paid in satisfaction of the USA's restitution judgment
21 against Steven Zinnel, including criminal monetary penalties and litigation expenses
22 from the TD Ameritrade IRA, shall apply as a credit against any and all amounts Steven
23 Zinnel has as a beneficiary of the Castana Trust and for purposes of final distribution of
24 the assets of the Castana Trust;

25 6. Assuming the USA prevails in its garnishment action in satisfaction its
26 restitution judgment against Steven Zinnel, including criminal monetary penalties and
27 litigation expenses which are not to exceed \$1,013,056.06, TD Ameritrade, at the written
28 direction of David Zinnel shall either convert the remaining balance in the existing TD

1 Ameritrade IRA to an account held by "David Zinnel, Successor Trustee of the Castana
2 Trust" or TD Ameritrade will transfer the balance of the account to another financial
3 institution in care of "David Zinnel, Successor Trustee of the Castana Trust" and
4 pursuant to written instructions provided by David Zinnel; and

5 7. Pending the resolution of the USA's garnishment action against Steven
6 Zinnel, and notwithstanding his right to an accounting, Steven Zinnel shall not file any
7 petitions in the Probate Court seeking or concerning, among other things, any
8 distributions from the Castana Trust or liquidations of real or personal property.

9

10 Dated: July 6, 2022

K. GREG PETERSON, a Professional
Law Corporation

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By:


K. Greg Peterson, Esq.
Attorney for DAVID ZINNEL, Successor
Trustee of The Castana Trust, Dated March 4,
2009

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**STIPULATION AND ORDER RE DISPOSITION OF REMAINING
BALANCE OF TD AMERITRADE IRA ACCOUNT (*0163)
PURSUANT TO SETTLEMENT AGREEMENT**

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5 Telephone: (916) 443-3010
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7 Email: greg@kgregpeterson.com

8 Attorney for Third-Party Claimant DAVID ZINNELL
9

10 Steven Zinnel
11 420 S. Center Street
12 Orange, CA 92866
13 PRO SE
14

15 IN THE UNITED STATES DISTRICT COURT
16 EASTERN DISTRICT OF CALIFORNIA

17 UNITED STATES OF AMERICA) Case No.: 2:21-mc-00098-TLN-AC
18 Plaintiff,)
19 v.) STIPULATION AND ORDER RE
20 STEVEN ZINNELL) DISPOSITION OF REMAINING
21 Defendant and Judgment Debtor.) BALANCE OF TD AMERITRADE IRA
22) ACCOUNT (*0613) PURSUANT TO
23) SETTLEMENT AGREEMENT
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25) Case No.: 2:21-mc-00143-TLN-AC
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RECITALS

2 This action involves an Application for Writ of Garnishment filed on April 2, 2021,
3 by Plaintiff UNITED STATES OF AMERICA ("USA") in connection with criminal
4 monetary penalties totaling \$3,014,294 assessed against Debtor STEVEN ZINNEL
5 ("Steven") in criminal case number 2:11-CR-00234-TLN;

6 The Garnishee, TD AMERITRADE CLEARING, INC. ("TD Ameritrade"),
7 responded in this action by disclosing its possession of Rollover IRA Accounts 787–
8 727536 and 72–830613 (together, the "TD Ameritrade IRA") in which it claims Steven
9 has an interest;

10 Third Party Claimant DAVID ZINNEL ("David"), who was served with a copy of
11 the USA's Application for Writ of Garnishment responded in his capacity as Successor
12 Trustee of The Castana Trust, Dated March 4, 2009 (the "Castana Trust") and in his
13 capacity as a 50% beneficiary of the Castana Trust by claiming an interest in the entirety
14 of the TD Ameritrade IRA as an asset of the Castana Trust; and

15 On June 3, 2022, Steven and David entered into a settlement agreement with
16 Plaintiff USA that was placed on the record before Chief Magistrate Judge Kendall J.
17 Newman. As a material part of that settlement agreement Steven and David have
18 agreed as follows:

19 1. David agreed to dismiss his third-party claims and withdraw any claims of
20 fraud or undue influence in the USA's Application for Writ of Garnishment proceedings,
21 in exchange for the following:

22 A. Assuming it prevails in this garnishment action, the USA agreed to
23 limit the total amount of its criminal monetary penalties owed by Steven to
24 \$1,013,056.06 (\$513,056.06 restitution; \$500,000.00 penalty) and its litigation surcharge

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1 to \$150,000.00, for a total amount of \$1,163,056.06 (the "Agreed Amount") which the
2 USA shall seek to recover from the TD Ameritrade IRA account [Transcript 6:15]¹;

3 B. Assuming the USA is able to recover the Agreed Amount from the
4 TD Ameritrade IRA, David is then entitled to everything that remains in the TD
5 Ameritrade IRA [Transcript 5:22-6:5] as an asset of the Castana Trust [Transcript 6:19-
6 22, 9:20-21], and any balance remaining is to be sent to the Castana Trust [Transcript
7 7:10] or the account may be converted to a Castana Trust account [Transcript 7:11-12].
8 Steven and David agreed that any remaining balance of the TD Ameritrade IRA will be a
9 Castana Trust asset and that they will agree to execute whatever paperwork is
10 necessary to effectuate their agreement [Transcript 15:23-16:3, 16:7-12, 26:13-18];

11 C. Steven agreed that any and all amounts paid from the TD
12 Ameritrade IRA which are paid to the USA in satisfaction of the Agreed Amount pursuant
13 to the terms of the settlement in this matter are Steven's sole responsibility and not
14 David's [Transcript 5:12-13, 5:19-21]; and

15 D. After payment of any amounts from the TD Ameritrade IRA to the
16 USA pursuant to the terms of the settlement, all such amounts paid to the USA are to
17 apply as a credit against any interest Steven has as a beneficiary under the Castana
18 Trust [Transcript 10:10-14];

19 2. Steven agreed to all matters stated on the record in the transcript of
20 settlement proceedings [Transcript 21:3-17, 22:16-18], including the execution of any
21 documents to assure any remaining balance of the TD Ameritrade IRA account is
22 transferred to and becomes an asset of the Castana Trust [Transcript 22:6-15];

23 3. David agreed to all terms stated on the record [Transcript 25:9-11];

24 4. The USA agreed to all terms stated on the record [Transcript 25:15-19];

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27 1 All references to Transcript are to the Transcript of Proceedings of the Settlement
28 Conference held on June 3, 2022, before the Hon. Kendall J Newman, Chief Magistrate
Judge in this matter and as transcribed Thresha Spencer, CSR (ECF 134).

1 5. TD Ameritrade is not to distribute any proceeds from the TD Ameritrade
2 IRA until it gets an order from the federal court as to what the federal government is
3 entitled to collect under the terms of the settlement [Transcript 7:6-8] and following the
4 satisfaction of payment to the USA of the Agreed Amount from the TD Ameritrade IRA,
5 any remaining funds shall not be distributed by TD Ameritrade absent a court order or
6 further agreement of Steven and David [Transcript 12:25-13:4, 13:6-13, 13:20-14:1];

7 6. The USA agreed to a stay of the related action (2021-mc-00143) involving
8 garnishment of Steven's interest in any assets of the Castana Trust [Transcript 7:14-17]
9 and pending the determination of the USA's entitlement to fully satisfy the Agreed
10 Amount from the TD Ameritrade IRA. The stay of the Related Action is for all purposes
11 including discovery, with all dates vacated [Transcript 27:11-23]. If the USA is able to
12 fully satisfy the Agreed Amount from the TD Ameritrade IRA account, the USA has
13 agreed this will fully resolve all of its claims against Steven, to dismiss the Castana Trust
14 action (2021-mc-00143) and to remove any and all liens from any Castana Trust real
15 property [Transcript 7:18-21, 11:6-17, 19:14-25];

16 7. That notwithstanding his right to an accounting, and pending the resolution
17 of matters involving the USA's garnishment of the TD Ameritrade IRA, Steven agreed he
18 will not file any petitions in the Probate Court seeking, among other things, any
19 distributions from the Castana Trust or liquidations of real or personal property
20 [Transcript 8:7-12]; and

21 8. On June 6, 2022, and in reliance on the above-referenced agreements,
22 David dismissed his third-party claims in this action.

STIPULATION

24 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED TO by Third-
25 Party Claimant DAVID ZINNEL and Debtor STEVEN ZINNEL, Defendant, that

26 On the basis of their settlement agreement made and placed on the record before
27 this Court in the above action, Steven and David agree to the entry of an order by this
28 Court as follows:



1 1. Assuming the USA prevails in its garnishment action against Steven, and
2 only after the USA has so prevailed, any and all amounts paid in satisfaction of the
3 USA's restitution judgment against Steven, including criminal monetary penalties and
4 litigation expenses which shall not exceed \$1,013,056.06, are Steven's sole personal
5 responsibility and come from his personal interest in the TD Ameritrade IRA;

6 2. Any and all amounts remaining in the TD Ameritrade IRA after the USA
7 has recovered in this garnishment action against Steven's personal interest shall
8 become the property of David in his capacity as trustee of the Castana Trust, and TD
9 Ameritrade shall either convert the remaining balance in the existing TD Ameritrade IRA
10 to an account held by David in said capacity or TD Ameritrade shall transfer the balance
11 of the account to another financial institution in care of "David Zinnel, Successor Trustee
12 of the Castana Trust" and pursuant to written instructions provided by David;

13 3. Any and all amounts paid in satisfaction of the USA's restitution judgment
14 against Steven, including criminal monetary penalties and litigation expenses from the
15 TD Ameritrade IRA, shall apply as a credit against any and all amounts Steven has as a
16 beneficiary of the Castana Trust and for purposes of final distribution of the assets of the
17 Castana Trust;

18 4. Assuming the USA prevails in its garnishment action in satisfaction its
19 restitution judgment against Steven, including criminal monetary penalties and litigation
20 expenses which are not to exceed \$1,013,056.06, TD Ameritrade, at the written direction
21 of David shall either convert the remaining balance in the existing TD Ameritrade IRA to
22 an account held by "David Zinnel, Successor Trustee of the Castana Trust" or TD
23 Ameritrade will transfer the balance of the account to another financial institution in care
24 of "David Zinnel, Successor Trustee of the Castana Trust" and pursuant to written
25 instructions provided by David; and

26 5. Pending the resolution of the USA's garnishment action against Steven,
27 and notwithstanding his right to an accounting, Steven shall not file any petitions in the
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1 Probate Court seeking or concerning, among other things, any distributions from the
2 Castana Trust or liquidations of real or personal property.

3 IT IS SO STIPULATED.

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5 Dated: June 27, 2022

6 DAVID ZINNEL, Third-Party Claimant,
7 Successor Trustee and Residuary Beneficiary

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Dated: June ___, 2022

STEVEN ZINNEL, PRO SE

K. GREG PETERSON, a Professional
Law Corporation

By:

K. Greg Peterson, Esq.
Attorney for DAVID ZINNEL, Third-Party
Claimant, Successor Trustee and Residuary
Beneficiary

ORDER

The Court, having received, read, and considered the stipulation of the Third-Party Claimant DAVID ZINNEL and Debtor STEVEN ZINNEL (the "Parties"), and good cause appearing, hereby adopts the stipulation of the Parties in its entirety as its order, as follows:

1. Assuming the USA prevails in its garnishment action against Defendant STEVEN ZINNEL ("Steven"), and only after Plaintiff UNITED STATES OF AMERICA ("USA") has so prevailed, any and all amounts paid in satisfaction of the USA's restitution judgment against Steven, including criminal monetary penalties and litigation expenses which shall not exceed \$1,013,056.06, are Steven's sole personal

1 responsibility and come from his personal interest in TD Ameritrade Rollover IRA
2 Accounts 787-727536 and 72-830613 (together, the "TD Ameritrade IRA");

3 2. Any and all amounts remaining in the TD Ameritrade IRA after the USA
4 has recovered in this garnishment action against Steven Zinnel's personal interest shall
5 become the property of DAVID ZINNEL ("David") in his capacity as Trustee of the
6 CASTANA TRUST, DATED MARCH 4, 2009 (the "Castana Trust"), and TD Ameritrade
7 shall either convert the remaining balance in the existing TD Ameritrade IRA to an
8 account held by David Zinnel in said capacity or TD Ameritrade shall transfer the
9 balance of the account to another financial institution in care of "David Zinnel, Successor
10 Trustee of the Castana Trust" and pursuant to written instructions provided by David;

11 3. Any and all amounts paid in satisfaction of the USA's restitution judgment
12 against Steven, including criminal monetary penalties and litigation expenses from the
13 TD Ameritrade IRA, shall apply as a credit against any and all amounts Steven has as a
14 beneficiary of the Castana Trust and for purposes of final distribution of assets of the
15 Castana Trust;

16 4. Assuming the USA prevails in its garnishment action in satisfaction its
17 restitution judgment against Steven, including criminal monetary penalties and litigation
18 expenses which are not to exceed \$1,013,056.06, TD Ameritrade, at the written direction
19 of David, shall either convert the remaining balance in the existing TD Ameritrade IRA to
20 an account held by "David Zinnel, Successor Trustee of the Castana Trust" or TD
21 Ameritrade will transfer the balance of the account to another financial institution in care
22 of "David Zinnel, successor trustee of the Castana Trust" and pursuant to written
23 instructions provided by David; and

24 5. Pending the resolution of the USA's garnishment action against Steven, ,
25 and notwithstanding his right to an accounting, Steven shall not file any petitions in the
26 Probate Court seeking or concerning, among other things, any distributions from the
27 Castana Trust or liquidations of real or personal property.

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1 IT IS SO ORDERED.
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3 Dated: _____

4 Troy L. Nunley
5 United States District Judge
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PROOF OF SERVICE

I, Karen Traugh, do certify and declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action. My business address is 455 Capitol Mall, Suite 325, Sacramento, California 95814. On July 6, 2022, I served the within documents:

**NOTICE OF MOTION AND MOTION FOR TO ENFORCE
SETTLEMENT AGREEMENT AND FOR MONETARY SANCTIONS**

- BY MAIL:** by placing the document(s) listed above in a sealed envelope addressed to the person shown below and placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage prepaid.

**Steven Zinnel
11 Verdin Lane
Aliso Viejo, CA 92656
firsthalfsteve@gmail.com**

Pro Se Defendant/Judgment Debtor

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on July 6, 2022, at Sacramento, California.

Karen Traugh

DE-111

ATTORNEY OR PARTY WITHOUT ATTORNEY: NAME: K. Greg Peterson, Esq. FIRM NAME: K. Greg Peterson, A Professional Law Corporation STREET ADDRESS: 455 Capitol Mall, Suite 325 CITY: Sacramento TELEPHONE NO.: 916-443-3010 E-MAIL ADDRESS: greg@kgregpeterson.com ATTORNEY FOR (name): Jennifer Zinnel, Petitioner	STATE BAR NO.: 118287 STATE: CA ZIP CODE: 95814 FAX NO.: 916-492-2680	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO STREET ADDRESS: 3341 Power Inn Road MAILING ADDRESS: 3341 Power Inn Road CITY AND ZIP CODE: Sacramento, CA 95826 BRANCH NAME: William R. Ridgeway Family Relations Courthouse		FILED Superior Court Of California Sacramento 03/23/2023 ndelrosario By _____, Deputy Case Number: 34-2023-00336772
ESTATE OF (name): David P. Zinnel		DECEDENT
PETITION FOR	<input type="checkbox"/> Probate of <input type="checkbox"/> Lost Will and for Letters Testamentary <input type="checkbox"/> Probate of <input type="checkbox"/> Lost Will and for Letters of Administration with Will Annexed <input checked="" type="checkbox"/> Letters of Administration <input type="checkbox"/> Letters of Special Administration <input type="checkbox"/> with general powers <input checked="" type="checkbox"/> Authorization to Administer Under the Independent Administration of Estates Act <input type="checkbox"/> with limited authority	CASE NUMBER:
		HEARING DATE AND TIME: 8-15-2023 9:00 Am DEPT.: 129

1. Publication will be in (specify name of newspaper): The Daily Recorder

- a. Publication requested.
 b. Publication to be arranged.

2. Petitioner (name each):

Jennifer Zinnel

requests that

- a. decedent's will and codicils, if any, be admitted to probate.
- b. (name): Michael Brumbaugh be appointed
 (1) executor
 (2) administrator with will annexed
 (3) administrator
 (4) special administrator with general powers
 and Letters issue upon qualification.
- c. full limited authority be granted to administer under the Independent Administration of Estates Act.
- d. (1) bond not be required for the reasons stated in item 3e.
 (2) \$ bond be fixed. The bond will be furnished by an admitted surety insurer or as otherwise provided by law. (Specify reasons in Attachment 2 if the amount is different from the maximum required by Prob. Code, § 8482.)
 (3) \$ in deposits in a blocked account be allowed. Receipts will be filed.
 (Specify institution and location):
3. a. Decedent died on (date): October 14, 2022 at (place): Citrus Heights, CA
 (1) a resident of the county named above.
 (2) a nonresident of California and left an estate in the county named above located at (specify location permitting publication in the newspaper named in item 1):
- b. Decedent was a citizen of a country other than the United States (specify country):
- c. Street address, city, and county of decedent's residence at time of death (specify):
 6939 Lisa Marie Way.
 Carmichael, CA 95608

DE-111

ESTATE OF (name):	David P. Zinnel DECEDENT	CASE NUMBER:
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3. d. Character and estimated value of the property of the estate (complete in all cases):

- (1) Personal property: \$883,000
- (2) Annual gross income from
- (a) real property: \$
- (b) personal property: \$
- (3) Subtotal (add (1) and (2)): \$ 883,000
- (4) Gross fair market value of real property: \$ 595,100
- (5) (Less) Encumbrances: (\$ 400,000)
- (6) Net value of real property: \$ 195,100
- (7) Total (add (3) and (6)): \$ 1,078,100

- e. (1) Will waives bond. Special administrator is the named executor, and the will waives bond.
- (2) All beneficiaries are adults and have waived bond, and the will does not require a bond. (Affix waiver as Attachment 3e(2).)
- (3) All heirs at law are adults and have waived bond. (Affix waiver as Attachment 3e(3).)
- (4) Sole personal representative is a corporate fiduciary or an exempt government agency.

- f. (1) Decedent died intestate.
- (2) Copy of decedent's will dated: codicil dated (specify for each):

are affixed as Attachment 3f(2). (Include typed copies of handwritten documents and English translations of foreign-language documents.)

The will and all codicils are self-proving (Prob. Code, § 8220).

- (3) The original of the will and/or codicil identified above has been lost. (Affix a copy of the lost will or codicil or a written statement of the testamentary words or their substance in Attachment 3f(3), and state reasons in that attachment why the presumption in Prob. Code, § 6124 does not apply.)

g. Appointment of personal representative (check all applicable boxes):

- (1) Appointment of executor or administrator with will annexed:
- (a) Proposed executor is named as executor in the will and consents to act.
- (b) No executor is named in the will.
- (c) Proposed personal representative is a nominee of a person entitled to Letters. (Affix nomination as Attachment 3g(1)(c).)
- (d) Other named executors will not act because of death declination
 other reasons (specify):

Continued in Attachment 3g(1)(d).

- (2) Appointment of administrator:
- (a) Petitioner is a person entitled to Letters. (If necessary, explain priority in Attachment 3g(2)(a).)
- (b) Petitioner is a nominee of a person entitled to Letters. (Affix nomination as Attachment 3g(2)(b).)
- (c) Petitioner is related to the decedent as (specify): Spouse
- (3) Appointment of special administrator requested. (Specify grounds and requested powers in Attachment 3g(3).)
- (4) Proposed personal representative would be a successor personal representative.

h. Proposed personal representative is a

- (1) resident of California.
- (2) nonresident of California (specify permanent address):

- (3) resident of the United States.

- (4) nonresident of the United States.

DE-111

ESTATE OF (name):	David P. Zinnel DECEDENT	CASE NUMBER:
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4. Decedent's will does not preclude administration of this estate under the Independent Administration of Estates Act.
5. a. Decedent was survived by (check items (1) or (2), and (3) or (4), and (5) or (6), and (7) or (8))
- (1) spouse.
 - (2) no spouse as follows:
 - (a) divorced or never married.
 - (b) spouse deceased.
 - (3) registered domestic partner.
 - (4) no registered domestic partner. (See Fam. Code, § 297.5(c); Prob. Code, §§ 37(b), 6401(c), and 6402.)
 - (5) child as follows:
 - (a) natural or adopted.
 - (b) natural adopted by a third party.
 - (6) no child.
 - (7) issue of a predeceased child.
 - (8) no issue of a predeceased child.
- b. Decedent was was not survived by a stepchild or foster child or children who would have been adopted by decedent but for a legal barrier. (See Prob. Code, § 6454.)
6. (Complete if decedent was survived by (1) a spouse or registered domestic partner but no issue (only a or b apply), or (2) no spouse, registered domestic partner, or issue. (Check the first box that applies):)
- a. Decedent was survived by a parent or parents who are listed in item 8.
 - b. Decedent was survived by issue of deceased parents, all of whom are listed in item 8.
 - c. Decedent was survived by a grandparent or grandparents who are listed in item 8.
 - d. Decedent was survived by issue of grandparents, all of whom are listed in item 8.
 - e. Decedent was survived by issue of a predeceased spouse, all of whom are listed in item 8.
 - f. Decedent was survived by next of kin, all of whom are listed in item 8.
 - g. Decedent was survived by parents of a predeceased spouse or issue of those parents, if both are predeceased, all of whom are listed in item 8.
 - h. Decedent was survived by no known next of kin.
7. (Complete only if no spouse or issue survived decedent.)
- a. Decedent had no predeceased spouse.
 - b. Decedent had a predeceased spouse who
 - (1) died not more than 15 years before decedent and who owned an interest in real property that passed to decedent,
 - (2) died not more than five years before decedent and who owned personal property valued at \$10,000 or more that passed to decedent, (If you checked (1) or (2), check only the first box that applies):
 - (a) Decedent was survived by issue of a predeceased spouse, all of whom are listed in item 8.
 - (b) Decedent was survived by a parent or parents of the predeceased spouse who are listed in item 8.
 - (c) Decedent was survived by issue of a parent of the predeceased spouse, all of whom are listed in item 8.
 - (d) Decedent was survived by next of kin of the decedent, all of whom are listed in item 8.
 - (e) Decedent was survived by next of kin of the predeceased spouse, all of whom are listed in item 8.
 - (3) neither (1) nor (2) apply.
8. Listed on the next page are the names, relationships to decedent, ages, and addresses, so far as known to or reasonably ascertainable by petitioner, of (1) all persons mentioned in decedent's will or any codicil, whether living or deceased; (2) all persons named or checked in items 2, 5, 6, and 7; and (3) all beneficiaries of a trust named in decedent's will or any codicil in which the trustee and personal representative are the same person.

DE-111

ESTATE OF (name):	David P. Zinnel DECEDENT	CASE NUMBER:
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8. Name and relationship to decedent	Age	Address
Jennifer Zinnel - Spouse	52	6939 Lisa Marie Way Carmichael, CA 95608
Joshua Zinnel - Son	Minor	6939 Lisa Marie Way Carmichael, CA 95608
Katelynn Zinnel - Daughter	Minor	6939 Lisa Marie Way Carmichael, CA 95608
Lester Keith Zinnel	81	2459 Lakewood Drive Prescott, AZ 86301

Continued on Attachment 8.

9. Number of pages attached: 1

Date: 3.23.2023

K. Greg Peterson, Esq.

(TYPE OR PRINT NAME OF ATTORNEY)


(SIGNATURE OF ATTORNEY)*

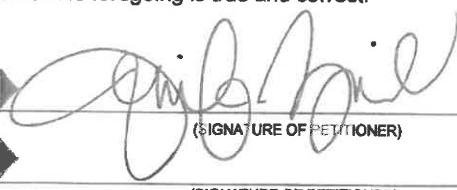
*(Signatures of all petitioners are also required. All petitioners must sign, but the petition may be verified by any one of them (Prob. Code, §§ 1020, 1021; Cal. Rules of Court, rule 7.103).)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 3.23.2023

Jennifer Zinnel


(TYPE OR PRINT NAME OF PETITIONER)


(TYPE OR PRINT NAME OF PETITIONER)


(SIGNATURE OF PETITIONER)

Signatures of additional petitioners follow last attachment.

Personal Representative Nomination

Petitioner is the Decedent's surviving spouse and hereby nominates licensed professional fiduciary Michael Brumbaugh of MBI Consulting, who has agreed to serve, as the Administrator for the Estate of David Zinnel.

1 K. Greg Peterson, Esq. (SBN: 118287)
2 K. GREG PETERSON, A PROFESSIONAL LAW CORPORATION
3 455 Capitol Mall, Suite 325
4 Sacramento, California 95814
5 Telephone: (916) 443-3010
6 Facsimile: (916) 492-2680
7 Email: greg@kgregpeterson.com

8 Attorney for Petitioner, JENNIFER ZINNEL

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SACRAMENTO

12 IN THE MATTER OF:

13 The Castana Trust, dated
14 March 4, 2009

15) Case No.: 34-2016-00200990
16)
17) PETITION TO APPOINT SUCCESSOR
18) TRUSTEE OF THE CASTANA TRUST
19) DATED MARCH 4, 2009[PROBATE
20) CODE 17200(b)(10)]
21)
22) Date: 8-30, 2023
23) Time: 9:00am
24) Dept.: 129

25 Petitioner, JENNIFER ZINNEL, herewith petitions this Court to appoint a
26 successor trustee of the Castana Trust, as follows.

27 I. BACKGROUND FACTS

28 1. The Castana Trust ("Trust") was established by ARDITH LOUISE FERRIS
on March 4, 2009. A true and correct copy of the Trust is attached hereto as Exhibit A.
2. Ardith Louise Ferris was the original trustee of the Trust.
3. Ardith Louise Ferris had two sons, DAVID P. ZINNEL and STEVE K. ZINNEL. Petitioner is informed and believes that their father, LESTER KEITH ZINNEL, divorced Ardith Louise Ferris on or before 1992, which is when he is believed to have remarried. For that reason, and according to the Trust, Ardith Louise Ferris was unmarried at the time the Trust was created.

1 4. Ardith Louise Ferris died on September 21, 2016, and her son, Steve K.
2 Zinnel, became the successor trustee pursuant to Section 7.1 of the Trust.

3 5. On April 6, 2017, this Court entered an Order Removing Trustee in this
4 action, removing Steve K. Zinnel as trustee of the Trust and appointing David P. Zinnel
5 as successor trustee of the Trust. A true and correct copy of the Order Removing
6 Trustee is attached hereto as **Exhibit B**.

7 6. On October 14, 2022, David P. Zinnel died intestate, and the Trust currently
8 has no acting or named successor trustee. A true and correct copy of the Certificate of
9 Death of David P. Zinnel is attached hereto as **Exhibit C**.

10 7. Petitioner was David P. Zinnel's wife at the time of his death and has filed a
11 Petition for Letters of Administration with this Court concurrently with this Petition. In her
12 Petition for Letters of Administration Petitioner has requested that MICHAEL
13 BRUMBAUGH be appointed Administrator of the estate of David P. Zinnel. Petitioner
14 and her two minor children, JOSHUA ZINNEL and KATELYNN ZINNEL, are the only
15 heirs who would be entitled to any distribution of assets from the intestate estate of David
16 P. Zinnel.

17 II. PROPOSED SUCCESSOR TRUSTEE – MICHAEL BRUMBAUGH

18 8. Petitioner requests that this Court appoint Michael Brumbaugh, who is a
19 California Licensed Professional Fiduciary (License # 875) as the successor trustee of
20 the Trust.

21 9. Petitioner is informed and believes that Michael Brumbaugh has served this
22 Court as a Court-Appointed Referee and Receiver in many different matters, and as a
23 Trustee and Administrator of various trust and probate estates. His qualifications are set
24 forth in his Declaration which is being submitted concurrently with this Petition. As
25 indicated in his Declaration, Mike Brumbaugh has agreed to serve as Successor Trustee
26 of the Trust if appointed by this Court.

27 III. STIPULATION OF STEVE K. ZINNEL, BENEFICIARY

28

1 10. Besides the Estate of David P. Zinnel, the only other named beneficiary of
 2 the Trust is Steve K. Zinnel, and Steve K. Zinnel has stipulated to the appointment of
 3 Michael Brumbaugh as successor trustee of the Trust. A Stipulation Re Appointment of
 4 Successor Trustee signed by Steve K. Zinnel is being filed concurrently with this Petition.

5 IV. REMAINING ADMINISTRATION OF TRUST

6 11. The Trust assets are to be distributed to the two sons of Ardith Louise
 7 Ferris who are Steve K. Zinnel and David P. Zinnel. Because David is now deceased his
 8 share of the Trust estate will have to be administered in accordance with the Petition for
 9 Letters of Administration filed by Petitioner, and Petitioner is expected to ultimately
 10 benefit from that administration.

11 12. There are two pieces of real property that are held by the office of the
 12 trustee of the trust and titled in the name of the Trust:

- 13 a. 1302 Emerald St., Onawa, IA 51040; and
 14 b. 2428 Glenfaire Dr., Rancho Cordova, CA 95670.

15 13. The only other significant asset of the Trust is the remaining balance of a
 16 TD Ameritrade IRA ("IRA account"). Pursuant to the terms of a settlement of the Federal
 17 Garnishment Action referenced below that was entered into on the record on June 3,
 18 2022, between, among others, Steve K. Zinnel, David P. Zinnel, and the UNITED
 19 STATES OF AMERICA, and due to the fact of death of David P. Zinnel thereafter, the
 20 transfer of the IRA account to the Trust is being withheld pending further order of the US
 21 District Court for the Eastern District of California in the following case: United States of
 22 America vs. Steven Zinnel Case No. 2:21-mc-00098 TLN AC ("**Federal Garnishment**
 23 **Action**"). Specifically, the court in the Federal Garnishment Action is waiting for a
 24 successor trustee of the Trust to be appointed by this Court, and so that the IRA account
 25 can be distributed to the Trust.

26 14. Once the IRA account has been distributed to the Trust and a first and final
 27 accounting prepared, Petitioner is informed and believes that Michael Brumbaugh will file
 28 his first and final account, report and plan for distribution.

V. POINTS AND AUTHORITIES

15. Petitioner, as an ultimate beneficiary of the Trust, may petition this Court to appoint a trustee. Prob C 17200(b)(10).

VI. PERSONS ENTITLED TO NOTICE

Jennifer Zinnel - Petitioner/wife

6939 Lisa Marie Way

Carmichael, CA 95608

Steve K. Zinnel - Beneficiary/brother

Katelynn Zinnel - Minor child/heir

Katelynn Zimmer - Min
6939 Lisa Marie Way

0959 Lisa Marie Way
Carmichael, CA 95608

11 Verdin Lane
Aliso Viejo, CA 92656

Año Viejo, 67-02000

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Joshua Zinnel - Minor
2020-21 - M.L.W.

6939 Lisa Marie Way
Sparta, NC 27393

Michael Brumbaugh - Proposed Successor Trustee

Successor Trustee
P.O. Box 3100

P.O. Box 3100
Fair Oaks, CA 95628

VII. PRAYER FOR RELIEF

WHEREFORE, Petitioner JENNIFER ZINNEL herewith prays for the following relief from this Court and that this Court determines as follows:

1. That all parties entitled to notice of this matter have been properly served and provided with notice of these proceedings;

2. That the Castana Trust, dated March 4, 2009, be determined to be a valid and existing trust;

3. That due to the death of the acting trustee, David P. Zinnel, that private fiduciary Michael Brumbaugh be appointed to serve as the successor trustee of the Castana Trust, dated March 4, 2009;

4. That an accounting of the Trust shall be filed at the time Michael Brumbaugh submits his first and final account, report and proposed plan of distribution; and

5. For such other and further relief as this Court deems just and necessary.

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1 Dated: March 11, 2023

Respectfully submitted,

2 K. GREG PETERSON, a Professional
3 Law Corporation

4 By: _____

5 K. Greg Peterson, Esq., Attorney for
6 JENNIFER ZINNEL, Petitioner



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VERIFICATION

I, JENNIFER ZINNELL, Petitioner, declare:

3 I have read the foregoing PETITION TO APPOINT SUCCESSOR TRUSTEE
4 [PROBATE CODE 17200(b)(10)] and know the contents thereof. I believe that the same
5 is true of my own knowledge, except to those matters which are therein stated on
6 information and belief, and as to those matters, I believe them to be true.

7 I declare under penalty of perjury under the laws of the state of California that the
8 foregoing is true and correct and that this verification was executed on 3.23,
9 2023.

Jennifer Zinnel

EXHIBIT A

CASTANA TRUST**ARTICLE ONE****CREATION OF TRUST**

- 1.1. Parties. This trust agreement is made by Ardit Louise Ferris (the "settlor" and "trustee") of Sacramento County, California. The settlor hereby transfers and assigns to the trustee certain property (the "trust estate"), in trust, to be held, administered, and distributed as provided in this instrument.
- 1.2. Names of Trusts. The trusts created by this instrument shall be known collectively as the Castana Trust, and each separate trust created under this instrument shall be referred to by adding the name or designation of that separate trust as it appears in the appropriate section of this instrument.
- 1.3. Effective Date. This agreement shall be effective immediately on execution by all the parties.
- 1.4. Marital Status. The settlor is unmarried.
- 1.5. Identification of Living Children. The settlor has two living children:

NameDate of Birth

Steve K. Zinnel

12/31/63

David P. Zinnel

2/18/70

- 1.6. No Deceased Children. The settlor has no deceased children.
- 1.7. Definitions of Child, Children, and Issue. As used in this instrument, the terms "child" and "children" refer to all persons referred to in California *Probate Code* § 26, as in effect at the time of execution of this instrument, and the term "issue" refers to all persons referred to in California *Probate Code* § 50, as in effect at the time of execution of this instrument.

ARTICLE TWO

TRUST ESTATE

- 2.1. Definition of Trust Estate. All property subject to this instrument from time to time is referred to as the "trust estate" and shall be held, administered, and distributed as provided in this instrument. The trustee shall hold, administer, and distribute the property described in any schedules of property (which are attached hereto and made a part of this trust instrument), any other property that may be hereafter subject to this trust, and the income and proceeds attributable to all such property, in accordance with the provisions of this instrument.
- 2.2. Additions to Trust. From time to time, the trustee may accept additions to this trust from any source. All such additions shall become part of the trust estate and shall be held, administered, and distributed in accordance with the terms of this instrument. That additional property shall become part of the trust estate on written acceptance of it by the trustee. Any additions to the trust shall be made by designating in writing the property to be added. However, the titling of any account, deed, or similar asset in the name of the trustee, as trustee of this trust, or any alternate or successor trustee acting under this instrument, shall be deemed to be a transfer to this trust. Any designation by a third

party, whether by will, deed, account title designation, or similar transfer, shall also be a transfer to the trust estate.

ARTICLE THREE

RIGHTS AND POWERS OF SETTLOR

- 3.1. Power of Revocation and Amendment. Any trust created by this instrument may be amended, revoked, or terminated by the settlor, in whole or in part, at any time during her lifetime. After the settlor's death, any trust created by this instrument shall be irrevocable and not subject to amendment.
- 3.2. Method of Revocation or Amendment. Any amendment, revocation, or termination of any trust created by this instrument shall be made by written instrument signed by the settlor and delivered to the trustee. An exercise of the power of amendment substantially affecting the duties, rights, and liabilities of the trustee shall be effective only if agreed to by the trustee in writing.
- 3.3. Delivery of Property After Revocation. After any revocation or termination, the trustee shall promptly deliver the designated property to the settlor.
- 3.4. Trustee's Retention of Assets on Revocation. In the event of any revocation of all or part of the trust, the trustee shall be entitled to retain sufficient assets to reasonably secure the payment of liabilities the trustee has lawfully incurred in administering the trust and any fees that have been earned by the trustee, until such time as those liabilities have been discharged and fees paid, unless the settlor indemnifies the trustee against loss or expense.
- 3.5. Settlor's Power to Borrow From Trust Estate. Notwithstanding any other provision in this instrument, during the settlor's lifetime, the settlor may borrow from the income or principal of the trust estate, with or without security, such amounts on such terms as the

settlor specifies in a signed writing filed with the trustee.

- 3.6. No Exercise of Rights and Powers of Settlor By Others. The rights and powers of the settlor as provided in this instrument, including any power to amend, revoke, or terminate any trust created by this instrument, are personal to the settlor and may not be exercised by any other person or entity.

ARTICLE FOUR

DISTRIBUTIONS DURING SETTLOR'S LIFE

- 4.1. Payment of Income During Settlor's Life. So long as the settlor is living, the trustee shall pay to or apply for the benefit of the settlor all of the net income of the trust, in monthly or other convenient installments (but not less often than annually) as the settlor and the trustee may agree on from time to time.
- 4.2. Distributions of Principal During Settlor's Lifetime. From time to time during the settlor's lifetime, the trustee shall distribute to or apply for the benefit of the settlor as much of the principal of the trust as the trustee, in the trustee's discretion, deems proper for the settlor's comfort, welfare, and happiness. In exercising discretion, the trustee shall give the consideration that the trustee deems proper to all other income and resources then readily available to the settlor for use for these purposes and that are then known to the trustee. All decisions of the trustee regarding payments under this section, if any, are within the trustee's discretion and shall be final and incontestable by anyone.
- 4.3. Distributions of Principal at Request of Settlor. During the settlor's lifetime, the trustee shall distribute to the settlor such amounts from the principal of the trust, up to the whole thereof, as the settlor may from time to time request of the trustee in writing.
- 4.4. Requests in Behalf of the Settlor Unable to Do So Personally. If, at any time, the settlor is unable personally to make a request of the trustee to withdraw principal of the trust, the

settlor's right to make the request may be exercised for or in her behalf by an attorney in fact who, at the time of the exercise, is duly appointed and acting for the settlor under a valid and enforceable durable power of attorney executed by the settlor under the Uniform Durable Power of Attorney Act, or any successor statute. If there is no such attorney in fact, then the trustee shall have the discretion to make any principal distribution to or for the benefit of the settlor that the settlor could have requested personally if she were able to do so. In making any principal distribution under this section (whether pursuant to a request by an attorney in fact or not), the trustee shall pay as much of the principal as the trustee, in the trustee's discretion, deems necessary for the settlor's health, education, support, and maintenance. The trustee shall have discretion to determine when the settlor is unable personally to request principal payments from the trustee for purposes of this section.

4.5. Trustee's Power to Make Gifts at Direction of Settlor. During the settlor's lifetime, the trustee shall distribute such sums of trust principal to such person or persons who are the natural objects of the settlor's bounty, as the settlor may direct in writing. In the event that the settlor is unable to direct the trustee in writing under this section due to incapacity, such direction may be made on the settlor's behalf by a duly authorized attorney in fact acting under a valid durable power of attorney executed by the settlor under the Uniform Durable Power of Attorney Act (or successor statute); provided, however, that the amount of such gifts pursuant to the direction of an attorney in fact to any one person in any one year shall not exceed the annual amount excluded from gift tax under Section 2503(b) of the Internal Revenue Code (or successor statute).

ARTICLE FIVE

DISTRIBUTIONS AFTER SETTLOR'S DEATH

5.1. Payment of Death Taxes, Debts, and Expenses on Statement From Personal Representative.

After the settlor's death, on receipt by the trustee of a written statement from the personal representative of the settlor's estate requesting that the trustee pay death taxes, debts, and expenses (as defined in Article Eight), with respect to any property in the settlor's estate, the trustee shall pay, either directly or to the personal representative, any amounts requested by the personal representative for those purposes, in the manner specified below. The trustee may rely on the personal representative's statement and shall not be liable for any act or omission by the personal representative in protesting or failing to protest the legality, propriety, or amount of the death taxes, debts, or expenses. If there is no personal representative, the trustee shall make the payments directly. Payments of debts and expenses shall be made by the trustee from the trust estate. All death taxes payable by reason of the settlor's death shall also be paid by the trustee from the trust estate.

5.2. Trustee's Power to Defer Division or Distribution. Whenever the trustee is directed to divide any part of the trust estate or distribute trust assets on the death of the settlor, the trustee may, in the trustee's discretion, defer actual division or distribution for such reasonable period of time as is needed to effectively identify, take possession of, value, divide, and distribute the assets of the trust. During this time of deferral, the trustee may manage the trust assets through a single administrative trust. The ability of the trustee to delay division or distribution shall not affect the vesting of interests, which shall be as of the date of death.

5.3. Distribution of specific trust assets. On the settlor's death, the trustee is directed to distribute the following specific assets:

See Exhibit 1 attached hereto.

Exhibit 1 attached hereto, which may be amended from time to time at the Settlor's sole discretion. To be effective and operative, the attached "Exhibit" 1 must be signed and dated by Ardith Ferris as the Settlor and Trustee. In the event of a conflict, the most recently signed and dated "Exhibit 1" is operative.

5.4. Disposition of Remaining Trust Estate. On the settlor's death, the remaining trust estate shall be disposed of:

- (a) If any children of the settlor survive her, the trustee shall divide the trust property into as many shares of equal market value as are necessary to create one share for each of the settlor's children who survive her and one share for each of the settlor's children who predecease her but who leave issue surviving her, as limited by subparagraph (f) below.
- (b) Each share created for a deceased child shall be distributed to the then-living issue of that deceased child in the manner provided in California *Probate Code* § 246. If an individual issue of a deceased child has reached the age of 25 years at the death of the settlor, the trustee shall distribute that issue's share outright to that issue; if an individual issue of a deceased child has not reached the age of 25 years at the death of the settlor, the trustee shall continue to hold, administer, and distribute that issue's share in a separate trust for that issue according to the terms set forth in Article Six applicable to the Separate Share Trust for Issue.

- (c) If none of the children of the settlor survive her, but the settlor leaves issue surviving, the trustee shall distribute the trust property to those issue, who are to take that property in the manner provided in California *Probate Code* § 246. If an individual issue has reached the age of 25 years at the death of the settlor, the trustee shall distribute that issue's share outright to that issue; if an individual issue has not reached the age of 25 years at the death of the settlor, the trustee shall continue to hold, administer, and distribute that issue's share in a separate trust for that issue according to the terms set forth in Article Six applicable to the Separate Share Trust for Issue.
- (d) If none of the issue of the settlor survive her, the trust property shall be distributed outright to the settlor's heirs.
- (e) Any business owned by settlor, regardless of the form of the business (i.e., sole proprietorship, Corporations, Limited Liability Companies) shall be immediately distributed free of trust to Settlor's heirs.

ARTICLE SIX
DISPOSITIVE PROVISIONS OF TRUST CREATED
AFTER SETTLOR'S DEATH

- 6.1. Spendthrift Clause: The interests of the beneficiaries under this instrument are not transferable by voluntary or involuntary assignment or by operation of law, and shall be free from the claims of creditors and from attachment, execution, bankruptcy, and other

legal process, to the maximum extent permitted by law. If any such transfer is made or attempted by or against any beneficiary, all further trust payments of income or principal or both to that beneficiary (and any right of that beneficiary to such payments) shall be suspended for a period of time or indefinitely (but in no case for longer than the term of the trust) as the trustee determines. In lieu of payments to that beneficiary, the trustee may apply so much of the trust income or principal or both to which the beneficiary would otherwise be entitled as the trustee deems necessary for the beneficiary's education and support. All trust income (to which the beneficiary would otherwise be entitled) not so applied shall in the discretion of the trustee be accumulated and added to trust at such time or times as the trustee deems proper.

ARTICLE SEVEN

TRUSTEE

7.1. Settlor's Power to Designate Successor Trustees. Initially, Settlor designates Steve A. Zinnel, Settlor's son as her Successor Trustee. However, at any time, the settlor may designate any suitable person or entity to act as a successor trustee if the trustee dies, becomes incapacitated, or is otherwise unable or unwilling to continue to act as trustee or co-trustee. Any designation under this section shall be made by a signed writing delivered to the person or entity designated as successor trustee or co-trustee. If more than one designation is made under this section, only the most recent designation shall be valid.

7.2. Not Used.

7.3. Successor Trustees. If the office of trustee becomes vacant by reason of death, incapacity, or any other reason, and no successor trustee or co-trustees have been designated under any

other provision of this trust instrument, a new trustee or co-trustee shall be appointed by the court.

- 7.4. Definition of Trustee. Reference in this instrument to "the trustee" shall be deemed a reference to whoever is serving as trustee or co-trustees, and shall include alternate or successor trustees or co-trustees, unless the context requires otherwise.
- 7.5. Removal and Replacement of Trustee by Settlor. The settlor shall have the power, at any time and for any reason, with or without cause, to remove any trustee acting under this instrument, and notwithstanding any other provision of this instrument, designate another trustee to replace the removed trustee. Removal shall be effected by giving a written notice of removal to the trustee to be removed and to the designated successor. The removal shall become effective on the delivery to the settlor of a written acceptance of the trust by the successor trustee, and the settlor shall promptly notify the trustee being removed of the receipt of that acceptance.
- 7.6. Waiver of Bond. No bond or undertaking shall be required of any individual who serves as a trustee under this instrument.
- 7.7. Procedure for Resignation. Any trustee may resign at any time, without giving a reason for the resignation, by giving written notice, at least ninety (90) days before the time the resignation is to take effect, to the settlor, if living, to any other trustee then acting, to any persons authorized to designate a successor trustee, to all trust beneficiaries known to the trustee (or, in the case of a minor beneficiary, to the parent or guardian of that beneficiary) and to the successor trustee. A resignation shall be effective on written acceptance of the trust by the successor trustee.
- 7.8. General Powers of Trustee. To carry out the purposes of the trusts created under this instrument, and subject to any limitations stated elsewhere in this instrument, the trustee

shall have all of the following powers, in addition to all of the powers now or hereafter conferred on trustees by law:

- (a) With or without court authorization, sell (for cash or on deferred payments, and with or without security), convey, exchange, partition, and divide trust property; grant options for the sale or exchange of trust property for any purpose, whether the contract is to be performed or the option is to be exercised within or beyond the term of the trust; and lease trust property for any purpose, for terms within or extending beyond the expiration of the trust, regardless of whether the leased property is commercial or residential and regardless of the number of units leased.
- (b) Engage in any transactions with the personal representative of the estate of the settlor that are in the best interest of any trusts created in this instrument.
- (c) Manage, control, improve, and maintain all real and personal trust property.
- (d) Subdivide or develop land; make or obtain the vacation of plats and adjust boundaries, or adjust differences in valuation on exchange or partition by giving or receiving consideration; and dedicate land or easements to public use with or without consideration.
- (e) Make ordinary or extraordinary repairs or alterations in buildings or other trust property, demolish any improvements, raze existing party walls or buildings, and erect new party walls or buildings, as the trustee deems advisable.
- (f) Employ and discharge agents and employees, including but not limited to attorneys, accountants, investment and other advisers, custodians of assets, property managers, real estate agents and brokers, and appraisers, to advise and assist the trustee in the management of any trusts created under this trust instrument, and compensate them from the trust property.

- (g) With respect to securities held in trust, exercise all the rights, powers, and privileges of an owner, including, but not limited to, the power to vote, give proxies, and pay assessments and other sums deemed by the trustee necessary for the protection of the trust property; participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers, and liquidations, and, in connection therewith, deposit securities with and transfer title to any protective or other committee under such terms as the trustee deems advisable; exercise or sell stock subscription or conversion rights; and accept and retain as investments of the trust any securities or other property received through the exercise of any of the foregoing powers.
- (h) Hold securities or other trust property in the trustee's own name or in the name of a nominee, with or without disclosure of the trust, or in unregistered form, so that title may pass by delivery.
- (i) Deposit securities in a securities depository that is either licensed or exempt from licensing.
- (j) Borrow money for any trust purpose from any person or entity, including one acting as trustee hereunder, on such terms and conditions as the trustee deems advisable, and obligate the trust for repayment; encumber any trust property by mortgage, deed of trust, pledge, or otherwise, whether for terms within or extending beyond the term of the trust, as the trustee deems advisable, to secure repayment of any such loan; replace, renew, and extend any such loan or encumbrance; and pay loans or other obligations of the trust deemed advisable by the trustee.
- (k) Procure and carry, at the expense of the trust, insurance in such forms and in such

amounts as the trustee deems advisable to protect the trust property against damage or loss, and to protect the trustee against liability with respect to third persons.

(l) Enforce any obligation owing to the trust, including any obligation secured by a deed of trust, mortgage, or pledge held as trust property, and purchase any property subject to a security instrument held as trust property at any sale under the instrument.

(m) Extend the time for payment of any note or other obligation held as an asset of, and owing to, the trust, including accrued or future interest, and extend the time for repayment beyond the term of the trust.

(n) Pay or contest any claim against the trust; release or prosecute any claim in favor of the trust; or, in lieu of payment, contest, release, or prosecution, adjust, compromise, or settle any such claim, in whole or in part, and with or without consideration.

(o) At trust expense, prosecute or defend actions, claims, or proceedings of whatever kind for the protection of the trust property and of the trustee in the performance of the trustee's duties, and employ and compensate attorneys, advisers, and other agents as the trustee deems advisable.

7.9. Power to Retain Trust Property. The trustee shall have the power to retain property received into the trust at its inception or later added to the trust, as long as the trustee considers that retention in the best interests of the trust or in furtherance of the goals of the settlor in creating the trust, as determined from this trust instrument, but subject to the standards of the prudent investor rule as set forth in the California *Uniform Prudent Investor Act*, as amended from time to time.

- 7.10. Trustee's Power to Invest Property. Subject to the standards of the prudent investor rule as stated in the California Uniform Prudent Investor Act, as amended from time to time, the trustee shall have the power to invest and manage the trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust.
- 7.11. Power Over Unproductive Property. The trustee shall have the power to retain or acquire unproductive or underproductive property.
- 7.12. Power to Operate Business. The trustee shall have the power to hold and operate any business or enterprise that is or becomes trust property, on such terms and for such a time as the trustee, in the trustee's discretion, deems advisable; to purchase, acquire, invest in, or otherwise participate in, any business or other enterprise on behalf of the trust; or to sell, dissolve, liquidate, or terminate any such business. The trustee shall also have the power to incorporate, reorganize, or otherwise change the form of a business or enterprise that is part of the trust, through merger or consolidation of two or more enterprises or otherwise, and to participate in that business or enterprise as a sole proprietor, as a general or limited partner, as a shareholder, or in any other capacity. Any operation, sale, purchase, acquisition, investment in, or dissolution or liquidation of a business interest, in good faith, shall be at the risk of the trust, and without liability on the part of the trustee for any resulting losses. The trustee shall also have the power to contribute capital or loan money to the business or enterprise on such terms and conditions as the trustee deems advisable.
- 7.13. Power to Operate Farm or Ranch. The trustee shall have the power to continue to hold, operate, sell, purchase, acquire, invest in, or liquidate any farming or ranch property, or any interest in farming or ranching property, whether organized as a sole proprietorship,

general or limited partnership, corporation, or otherwise, on such terms and for such time as the trustee, in the trustee's discretion, deems advisable. Any such operation, sale, purchase, acquisition, investment, or liquidation, in good faith, shall be at the risk of the trust and without liability on the part of the trustee for any resulting losses. The trustee shall have all powers necessary or appropriate to carry out the management of such farming and ranching property. The trustee shall also have the power to incorporate any farming or ranching property, or any interest therein, and to hold the stock as a trust asset; to borrow money for any purpose related to the operation, or the acquisition or disposition, of any such farming or ranching interests; and to employ agents in the management and operation of that property. The net profits and losses from the farming and ranching operations conducted by the trust shall be computed in accordance with recognized methods of accounting for comparable activities. The net profits from these activities shall become trust income. The net losses from these activities shall not reduce other trust income for the fiscal or calendar year during which they occur, but shall be carried into subsequent fiscal or calendar years and reduce the net profits of the business for those years.

7.14. Power to Combine Trust Assets. Each trust created under this instrument shall constitute a separate trust and be administered accordingly; however, the assets of all of the trusts may be combined for bookkeeping purposes and held for the trust beneficiaries without physical division into separate trusts until time of distribution.

7.15. Early Termination of Trusts. The trustee shall have the power, in the trustee's discretion, to terminate any trust created under this trust instrument whenever the fair market value of the trust falls below twenty-five thousand dollars (\$25,000), or becomes so small in relation to the costs of administration as to make continuing

administration uneconomical. Continuing administration shall be uneconomical if the trustee determines that, with reference to the trust fee schedules then in effect for corporate fiduciaries in the area in which the trust is being administered, the trust would be subject to the minimum trust administration fees of those fiduciaries, regardless of the value of the trust. On termination, the trustee shall distribute the principal and any accrued or undistributed net income to the income beneficiaries in proportion to their shares of the income. If no fixed amount of income is payable to specific beneficiaries, the trustee shall distribute the principal and any accrued or undistributed net income in equal shares to those beneficiaries who would then be entitled to income payments from the trust.

- 7.16. Division or Distribution in Cash or Kind. In order to satisfy a pecuniary gift or to distribute or divide trust assets into shares or partial shares, the trustee may distribute or divide those assets in kind, or divide undivided interests in those assets, or sell all or any part of those assets and distribute or divide the property in cash, in kind, or partly in cash and partly in kind. Property distributed to satisfy a pecuniary gift under this instrument shall be valued at its fair market value at the time of distribution.
- 7.17. Payments to Legally Incapacitated Persons. If at any time any trust beneficiary is a minor, or it appears to the trustee that any trust beneficiary is incapacitated, incompetent, or for any other reason not able to receive payments or make intelligent or responsible use of the payments, then the trustee, in lieu of making direct payments to the trust beneficiary, may make payments to the beneficiary's conservator or guardian; to the beneficiary's custodian under the Uniform Gifts to Minors Act or Uniform Transfers to Minors Act of any state; to one or more suitable persons as the trustee deems proper, such as a relative of or a person residing with the beneficiary, to be used for the beneficiary's benefit; to any other person, firm, or agency for services rendered or to be rendered for

the beneficiary's assistance or benefit; or to accounts in the beneficiary's name with financial institutions. The receipt of payments by any of the foregoing shall constitute a sufficient acquittance of the trustee for all purposes.

- 7.18. Trustee's Liability. No trustee shall be liable to any interested party for acts or omissions of that trustee, except those resulting from that trustee's willful misconduct or gross negligence. This standard shall also apply regarding a trustee's liability for the acts or affected by that event.
- 7.19. Written Notice to Trustee. Until the trustee receives written notice of any death other event on which the right to payments from any trust may depend, the trustee shall incur no liability for disbursements made in good faith to persons whose interests may have been omissions of any co-trustee, predecessor trustee, or agent employed by the trustee.
- 7.20. Duty to Account. The trustee shall render accounts at least annually, at the termination of a trust, and on a change of trustees, to the persons and in the manner required by law.

ARTICLE EIGHT

CONCLUDING PROVISIONS

- 8.1. Perpetuities Savings Clause. Notwithstanding any other provision of this instrument, every trust created by this instrument shall terminate no later than twenty-one (21) years after the death of the last survivor of the Settlor's issue who are alive at the creation of the trust. For purposes of this perpetuities savings clause, a trust shall be deemed to have been created on the date the trust becomes irrevocable or the date of the death of the settlor, whichever occurs first. If a trust is terminated under this section, the trustee shall

distribute all of the principal and undistributed income of the trust to the income beneficiaries of the trust in the proportion in which they are entitled (or eligible, in the case of discretionary payments) to receive income immediately before the termination. If that proportion is not fixed by the terms of the trust, the trustee shall distribute all of the trust property to the persons then entitled or eligible to receive income from the trust outright in a manner that, in the trustee's opinion, will give effect to the intent of the settlor in creating the trust. The trustee's decision is to be final and incontestable by anyone.

- 8.2. Simultaneous Death. If any beneficiary under this instrument and the settlor die under circumstances in which the order of their deaths cannot be established by clear and convincing evidence, the settlor shall be deemed to have survived the beneficiary, and the provisions of this instrument shall be construed accordingly.
- 8.3. Survivorship Requirement. For the purposes of this instrument, a beneficiary shall be deemed not to have survived the settlor if that beneficiary dies within six months after the settlor's death.
- 8.4. No-Contest Clause. If any beneficiary under this instrument, singularly or in combination with any other person or persons, directly or indirectly contests this instrument, any amendment to this instrument, or the will of the settlor in whole or in part, or opposes, objects to, or seeks to invalidate any of the provisions of this instrument or the will of the settlor, or seeks to succeed to any part of the estate of the settlor other than in the manner specified in this instrument or in the will of the settlor, then the right of that person to take any interest given to him or her by this instrument or any amendment to this instrument shall be void, and any gift or other interest in the trust property to which the beneficiary would otherwise have been entitled shall pass as if he or she had predeceased the settlor without issue. Settlor specifically exempts petitions under

California *Probate Code* §§ 9860, 17200 or 17200.1 from the effect of this clause.

8.5. Definitions of Death Taxes, Debts, and Expenses. As used in this instrument, the following definitions apply:

- (a) The term "death taxes" shall mean all inheritance, estate, succession, and other similar taxes that are payable by any person on account of that person's interest in the estate of the settlor or by reason of the settlor's death, including penalties and interest, but excluding the following: (i) any additional tax that may be assessed under Internal Revenue Code Section 2032A; and (ii) any federal or state tax imposed on any generation-skipping transfer, as that term is defined in the federal tax laws, unless that generation-skipping transfer tax is payable directly out of the assets of a trust created by this instrument.
- (b) The term "debts and expenses" shall include the following: (i) all costs, expenses of litigation, counsel fees, or other charges that the trustee incurs in connection with the determination of the amount of the death taxes, interest, or penalties referred to in subsection (a) of this section; and (ii) legally enforceable debts, funeral expenses, expenses of last illness, and administration and property expenses.

8.6. Definition of Incapacity. As used in this instrument, "incapacity" or "incapacitated" means a person operating under a legal disability such as a duly established conservatorship, or a person who is unable to do either of the following:

- (a) Provide properly for that person's own needs for physical health, food, clothing, or shelter; or
- (b) Manage substantially that person's own financial resources, or resist fraud or undue

influence.

8.7. Definition of Education. As used in this instrument, the term "education" refers to the following:

- (a) Education at public or private elementary, junior high, middle, or high schools, including boarding schools;
- (b) Undergraduate, graduate, and postgraduate study in any field, whether or not of a professional character, in colleges, universities, or other institutions of higher learning;
- (c) Specialized formal or informal training in music, the stage, the handicrafts, or the arts, whether by private instruction or otherwise; and
- (d) Formal or informal vocational or technical training, whether through programs or institutions devoted solely to vocational or technical training, or otherwise.

8.8. Captions. The captions appearing in this instrument are for convenience of reference only, and shall be disregarded in determining the meaning and effect of the provisions of this instrument.

8.9. Severability Clause. If any provision of this instrument is invalid, that provision shall be disregarded, and the remainder of this instrument shall be construed as if the invalid provision had not been included.

8.10. California Law to Apply. All questions concerning the validity, interpretation, and administration of this instrument, including any trusts created under this instrument, shall be governed by the laws of the State of California, regardless of the domicile of any trustee or beneficiary.

8.11. Distribution to Issue. If a division of property is to be made under this instrument among the issue of an individual, who is referred to in this section as the Designated Ancestor,

that division shall be made in the manner set forth in California *Probate Code* § 246. Accordingly, that division shall be made at the generation of the Designated Ancestor's children, regardless of whether any of those children survive the Designated Ancestor. The property shall be divided into as many equal shares as there are children of the Designated Ancestor who survive the Designated Ancestor (if any) plus deceased children of the Designated Ancestor who leave issue who survive the Designated Ancestor. Each child of the Designated Ancestor who survives the Designated Ancestor shall receive one such equal share. The equal share of each deceased child of the Designated Ancestor who leaves issue who survive the Designated Ancestor shall in turn be divided among that deceased child's issue who survive the designated ancestor in the manner described in this section as if the deceased child were the Designated Ancestor as to that share.

- 8.12. Gifts to Heirs. For any gift to "heirs" of the settlor that is made in this instrument, those heirs shall be determined as if the settlor had died intestate at the time for distribution prescribed in this instrument, and the identity and shares of those heirs shall be determined according to the California laws of succession that concern separate property not acquired from a previously deceased spouse and that are in effect at the time the settlor is deemed to have died.

ARTICLE NINE

SIGNATURE AND EXECUTION

- 9.1. Execution. I certify that I have read the foregoing trust agreement and that it correctly states the terms and conditions under which the trust estate is to be held, administered, and

distributed. The settlor approves this trust agreement in all particulars. The trustee approves and accepts the trusts provided for in this trust agreement.

Executed on March 4, 2009 at Gold River, California.

SETTLOR



Ardith Louise Ferris, Settlor

TRUSTEE



Ardith Louise Ferris, Trustee

05 03 2017 1200_1046426_1385

California All-Purpose Acknowledgment

State of California)

) SS

County of Calaveras)

On March 4, 2009, before me, Jayleyne Goltz, a notary public in and for the State of California, personally appeared Ardith Louise Ferris, personally who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


Notary Public



EXHIBIT 1

**DISTRIBUTION OF SPECIFIC TRUST ASSETS OF
CASTANA TRUST**

Pursuant to paragraph 5.3 of the Total Trust, initially established on March 4, 2009, on the settlor's death, the trustee is directed to distribute the following specific assets:

None at this time.

I certify that this "Exhibit 1", distributing specific assets, shall be effective immediately on execution by me and that any former "Exhibit 1" distributing specific assets are hereby expressly revoked.

Executed on March 4, 2009 at Gold River, California.

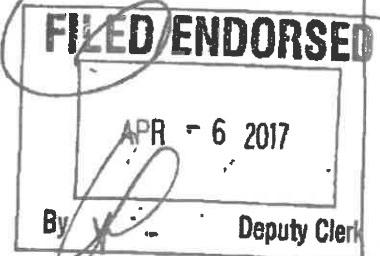
SETTLOR


Ardith Louise Ferris, Settlor

TRUSTEE


Ardith Louise Ferris, Trustee

EXHIBIT B



1 David P. Zinnel
2 Carmichael, CA 95608
3 916.944.3830

4
5 David P. Zinnel, IN PRO PER
6
7

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

In re Castana Trust,
Established March 4, 2009

No. 34-2016-00200990

ORDER REMOVING TRUSTEE

The petition of David P. Zinnel, as a beneficiary of Castana Trust, for removal of Steve K. Zinnel as trustee, for appointment of successor trustee. After hearing the petition and hearing the evidence, the court finds that all notices of hearing have been given as required by law, that all allegations of the petition are true, that good cause, namely that Steve K. Zinnel is unfit to administer the trust, exists for removal of Steve K. Zinnel.

IT IS ORDERED THAT

1. Steve K. Zinnel, trustee of the Castana Trust, is removed.
2. David P. Zinnel is appointed as successor trustee of the Castana Trust to serve without bond.
3. Steve K. Zinnel is ordered to turn over all assets and books and records of the Castana Trust to David P. Zinnel, as successor trustee.

Date: 4/6/17

A handwritten signature in black ink, appearing to read "S. M. Gevercer".

STEVEN M. GEVERCER

Judge / Commissioner of the Superior Court of

27 California, County of Sacramento
28

EXHIBIT C

CERTIFICATION OF VITAL RECORD

SACRAMENTO COUNTY

SACRAMENTO, CALIFORNIA

3052022300072

CERTIFICATE OF DEATH

32029403275

1. NAME OF DECEDENT - FIRST, MIDDLE DAVID	2. MIDDLE PAUL	3. LAST ZINNEL
4. DATE OF BIRTH mm/yyyy 01/01/1952	5. A.D.S. Yes No	6. UNDERLYING CAUSE OF DEATH Hypertension, Ischemic heart disease
7. DATE OF DEATH mm/yyyy 10/14/2022	8. HOUR 2015	9. DECEASED'S RACE - Up to Excessive weight and hypertension are factors CALCIASIAN
10. EDUCATION - Up to Excessive weight and hypertension are factors SOME COLLEGE	11. EMPLOYMENT STATUS PROJECT MANAGER	12. INDUSTRY/BUSINESS OR OCCUPATION (e.g., OILFIELD WORKER, CONSTRUCTION WORKER, MANUFACTURING, SERVICE INDUSTRY, FINANCIAL, ETC.) ELECTRICAL
13. DECEASED'S RESIDENCE ADDRESS 6039 LISA MARIE WAY	14. ZIP CODE 95808	15. STATE/FOREIGN COUNTRY CA
16. CITY OF DEATH CARMICHAEL	17. CITY OF BIRTH SACRAMENTO	18. CITY OF BIRTH CARMICHAEL, CA 95808
19. NAME OF SURVIVING SPOUSE - FIRST JENNIFER	20. MIDDLE LYNN	21. LAST BIRTH NAME HUNTER
22. NAME OF PARENT/SPAWN - FIRST LESTER	23. MIDDLE KLEM	24. LAST BIRTH NAME ZINNEL
25. NAME OF MOTHER/SPAWN - FIRST ARDITH	26. MIDDLE LOUISE	27. LAST BIRTH NAME FERRIS
28. DEPOSITION DATE mm/yyyy 10/28/2022	29. PLACE OF DEATH RES. JENNIFER ZINNEL 6039 LISA MARIE WAY, CARMICHAEL, CA 95808	30. DATE mm/yyyy 10/26/2022
31. TYPE OF FACILITY CREMATE/RESIDENCE	32. PLACE OF BURIAL # LYNTA HARRIS	33. LICENSE NUMBER EMB8876
34. NAME OF FACILITY LOWEST COST CREMATION AND BURIAL	35. ZIP CODE FD2059	36. DATE mm/yyyy 10/26/2022
37. PLACE OF DEATH ROADWAY HIGHWAY	38. FACILITY ADDRESS OR LOCATION WHERE FOUND Dead and recovered AUBURN BLVD AND WALNUT DRIVE	39. DATE mm/yyyy 10/26/2022
40. COUNTY SACRAMENTO	41. CITY CITRUS HEIGHTS	42. DATE mm/yyyy 10/26/2022
43. CAUSE OF DEATH MULTIPLE TRAUMATIC INJURIES	44. OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT READING IN THE UNDERLYING CAUSE OF DEATH NONE	45. OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT READING IN THE UNDERLYING CAUSE OF DEATH NONE
46. WHETHER PERFORMED FOR ANY CONDITION LISTED OR NOT NO	47. DATE mm/yyyy 10/18/2022	48. DATE mm/yyyy 10/18/2022
49. I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE, DEATH OCCURRED AT THE ABOVE DATE, TIME AND PLACE STATED FROM THE CAUSES STATED. Signature: ALLISON ROGERS	50. SIGNATURE AND TITLE OF CERTIFIER ALLISON ROGERS	51. DATE mm/yyyy 10/18/2022
52. LOCATION OF DEATH AUBURN BLVD AND WALNUT DRIVE CITRUS HEIGHTS, CA 95810	53. DATE mm/yyyy 10/18/2022	54. DATE mm/yyyy 10/18/2022
55. SIGNATURE OF CORONER/DEPUTY CORONER ALLISON ROGERS	56. SIGNATURE OF CORONER/DEPUTY CORONER ALLISON ROGERS	57. DATE mm/yyyy 10/18/2022

CERTIFIED COPY OF VITAL RECORD
STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

This is a true and exact reproduction of the document officially registered and placed on file in the office of the Sacramento County Clerk/Recorder.

DATE ISSUED:

FEB 22 2023

This copy is not valid unless prepared on an engraved border displaying the date, seal and signature of the County Clerk/Recorder.



Donna Allred
DONNA ALLRED, COUNTY CLERK/RECORDER
SACRAMENTO COUNTY, CALIFORNIA



ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

1 K. Greg Peterson, Esq. (SBN: 118287)
2 K. GREG PETERSON, A PROFESSIONAL LAW CORPORATION
3 455 Capitol Mall, Suite 325
4 Sacramento, California 95814
5 Telephone: (916) 443-3010
6 Facsimile: (916) 492-2680
7 Email: greg@kgregpeterson.com

8 Attorney for Petitioner, JENNIFER ZINNEL

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SACRAMENTO

12 IN THE MATTER OF:

13 The Castana Trust, dated
14 March 4, 2009

15) Case No.: 34-2016-00200990
16)
17) STIPULATION RE: APPOINTMENT OF
18) SUCCESSOR TRUSTEE OF THE
19) CASTANA TRUST DATED MARCH 4,
20) 2009
21)
22) Date: 8-30, 2023
23) Time: 9:00am
24) Dept.: 129

25 I, STEVE K. ZINNEL, am the son of Ardith Louise Ferris, and a beneficiary of THE
26 CASTANA TRUST DATED MARCH 4, 2009.

27 I herewith stipulate the appointment of MICHAEL BRUMBAUGH as Successor
28 Trustee of the Castana Trust, dated March 4, 2009.

29 IT IS SO STIPULATED.

30 Dated: March 18, 2023

31 By:

32 Steve K. Zinnel